

1           ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF  
2           AN AGGREGATE PRINCIPAL AMOUNT OF \$3,720,000  
3           CITY OF FORT WAYNE, INDIANA, HEALTH CARE  
4           FACILITIES REVENUE REFUNDING BONDS, HEALTH  
5           QUEST REALTY X ISSUE (FHA INSURED MORTGAGE)  
6           SERIES 1993A AND \$345,000 CITY OF FORT WAYNE,  
7           INDIANA, HEALTH CARE FACILITIES REVENUE  
8           TAXABLE BONDS, HEALTH QUEST REALTY X ISSUE  
9           (FHA INSURED MORTGAGE) SERIES 1993B;  
10          DESIGNATING THE BONDS AS LIMITED OBLIGATIONS  
11          OF THE CITY; APPROVING THE FORM OF, AND  
12          AUTHORIZING THE EXECUTION AND DELIVERY OF, THE  
13          TRUST INDENTURE, THE LOAN AGREEMENT, PLACEMENT  
14          AGREEMENT AND OTHER DOCUMENTS RELATED TO THE  
15          ISSUANCE AND SALE OF THE BONDS; REQUESTING  
16          AUTHENTICATION; APPOINTING BOND COUNSEL; AND  
17          AUTHORIZING PROPER OFFICERS TO DO ALL OTHER  
18          THINGS DEEMED NECESSARY OR ADVISABLE IN  
19          CONNECTION HEREWITH.

20           WHEREAS, pursuant to Title 36, Article 7, Chapter 12  
21           (the "Act"), the City of Fort Wayne, Indiana (the "City")  
22           has heretofore issued \$4,470,000 principal amount of City  
23           of Fort Wayne, Indiana Health Care Facilities Revenue  
24           Bonds Health Quest Realty X Issue (FHA Insured Mortgage),  
25           Series A (the "Prior Bonds") for the purpose of financing  
26           the costs of a project, consisting of the acquisition and  
27           improvement of certain premises in the City and  
28           construction thereon and equipment of a skilled care  
29           facility (the "Project"), owned by Health Quest Realty X,  
30           an Indiana general partnership (the "Developer"); and

31           WHEREAS, the City loaned (the "Prior Loan") the  
32           proceeds of the Prior Bonds to the Developer pursuant to  
33           a Financing Agreement dated as of November 1, 1983 (the  
34           "Financing Agreement") between the City and the  
35           Developer, pursuant to which the Developer agreed to make  
36           payments to provide sufficient funds to pay the principal  
37           of and interest on the Prior Bonds; and

38           WHEREAS, the Prior Loan is evidenced by the  
39           Developer's note (the "Note") in the aggregate principal  
40           amount of \$4,010,800, and a Mortgage securing the Note  
41           constituting a first lien on the Project (the  
42           "Mortgage"); and

43           WHEREAS, the United States Secretary of Housing and  
44           Urban Development, acting through the Federal Housing  
45           Commissioner ("FHA"), has insured the advances of funds  
46           secured by the Mortgage, and the Note was initially  
47           endorsed for insurance by FHA pursuant to Section 232 of  
48           the National Housing Act, as amended, and the regulations  
49           thereunder; and

50           WHEREAS, the City, as requested by the Developer,  
51           has determined to issue, sell and deliver City of Fort  
52           Wayne, Indiana, Health Care Facilities Revenue Refunding  
53           Bonds, Health Quest Realty X Issue (FHA Insured Mortgage)  
54           Series 1993A in an aggregate principal amount of  
55           \$3,720,000 (the "Series A Bonds") to make funds available  
56           for the refunding of the Prior Bonds and the refinancing  
57           of the Project, and \$345,000 principal amount of City of  
58           Fort Wayne, Indiana, Health Care Facilities Revenue  
59           Taxable Bonds, Health Quest Realty X Issue (FHA Insured  
60           Mortgage) Series 1993B (the "Series B Bonds"), both  
61           pursuant to the Act. The Series A Bonds and the Series B  
62           Bonds are collectively referred to herein as the "Bonds";  
63           and



1 WHEREAS, the Prior Bonds will be called for  
2 redemption on September 4, 1993; and

3 WHEREAS, upon the redemption of the Prior Bonds, the  
4 Note and the Mortgage will be held by the Trustee as  
5 security for the Bonds and FHA will continue to insure  
6 the advances of funds secured by the Mortgage and Note;  
7 and

8 WHEREAS, the City desires to sell the Bonds through  
9 a private placement thereof with certain investors,  
10 through Bank One, Columbus, N.A. (the "Placement Agent");  
11 and

12 WHEREAS, there have been prepared and submitted to  
13 the Common Council of the City (the "Common Council")  
14 proposed forms of:

15 (i) the Trust Indenture dated as of August 1,  
16 1993 (the "Indenture") between the City and Society  
17 National Bank, Indiana, as trustee (the "Trustee")  
18 pursuant to which the Bonds will be issued;

19 (ii) a Preliminary Private Placement  
20 Memorandum (the "Preliminary Placement Memorandum")  
21 to be used by the Placement Agent in connection  
22 with the sale of the Bonds;

23 (iii) a Bond Placement Agreement (the  
24 "Placement Agreement") between the City and the  
25 Placement Agent in connection with the sale of the  
26 Bonds; and

27 (iv) the Loan Agreement (the "Loan Agreement")  
28 dated as of August 1, 1993 between the City and the  
29 Developer.

30 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL  
31 OF THE CITY OF FORT WAYNE, INDIANA:

32 Section 1. Incorporation of Recitals. The Recitals  
contained in this Ordinance are true and correct and are  
incorporated in this Ordinance by this reference.

Section 2. Findings; Public Benefits. The Common  
Council of the City hereby finds and determines that the  
refunding of the Prior Bonds would be of benefit to the  
health and general welfare of the City and would comply  
with the Act.

Section 3. Issuance of the Bonds. The Common  
Council hereby authorizes the issuance of \$3,720,000  
principal amount of the Series A Bonds by the City, for  
the purpose of refunding the Prior Bonds issued by the  
City to acquire, improve, furnish or equip the Project  
and \$345,000 principal amount of the Series B Bonds for  
the purpose of depositing moneys into a Debt Service  
Reserve Fund (as defined in the Indenture) and paying  
certain costs of issuance for the Bonds. The Bonds shall  
be dated August 1, 1993; shall be numbered as the Trustee  
shall determine and shall be fully registered without  
coupons. The Bonds shall bear interest at a rate not to  
exceed 10.25% per annum and shall have maturities and  
redemptions as set forth in the Indenture approved by the  
Mayor of the City (the "Mayor") and the Clerk of the City  
(the "Clerk").

The principal of the Bonds shall be payable upon  
presentation thereof at the principal corporate trust



1 office of the Trustee under the Indenture. The interest  
2 on the Bonds shall be paid by check or draft of the  
3 Trustee sent to the registered owners of the Bonds;  
4 provided, however, if requested in writing by an owner of  
5 the Bonds and if proper instructions are provided to the  
6 Trustee as required under the Indenture, the Trustee is  
7 hereby authorized to pay the interest on the Bonds by  
8 wire transfer to the owners thereof.

9 The Bonds shall be executed on behalf of the City  
10 by, and bear the manual or facsimile signature of, the  
11 Mayor and Clerk, and the seal of the City shall be  
12 thereunto affixed (or imprinted or engraved if in  
13 facsimile).

14 The Bonds shall be in the form set forth in the  
15 final form of the Indenture.

16 Section 4. Sale of Bonds. The Common Council  
17 hereby authorizes the placement of the Bonds to the  
18 original purchasers thereof pursuant to the Indenture and  
19 the Placement Agreement.

20 Section 5. Limited Obligation. THE BONDS AND THE  
21 INTEREST THEREON DO NOT AND SHALL NEVER CONSTITUTE AN  
22 INDEBTEDNESS OF, OR A CHARGE AGAINST THE GENERAL CREDIT  
23 OR TAXING POWER OF, THE CITY, BUT ARE LIMITED OBLIGATIONS  
24 OF THE CITY PAYABLE SOLELY FROM REVENUES AND OTHER  
25 AMOUNTS DERIVED FROM THE LOAN AGREEMENT.

26 Section 6. The Indenture. The Indenture is hereby  
27 approved in the form submitted to this meeting, and a  
28 copy of the Indenture shall be filed with the minutes of  
29 this meeting. The Mayor and the Clerk are hereby  
30 authorized and directed to execute and deliver the  
31 Indenture without further approval of the Common Council  
32 in substantially the form herein approved with such  
additions, deletions and modifications thereto as may be  
approved under the Act, the execution of the Indenture  
being conclusive evidence of such approval and of the  
approval of the Common Council; and the Clerk, or any  
authorized representative of the City, is hereby  
authorized and directed to affix the seal of the City to  
the Indenture and to attest the same.

Section 7. Trustee. Society National Bank,  
Indiana, is hereby appointed Trustee under the Indenture.  
The Indenture may provide that the Trustee thereunder, or  
another corporate entity, shall act as bond registrar and  
authenticating agent.

Section 8. Delivery of Bonds. After execution on  
behalf of the Mayor and the Clerk, the Bonds shall be  
delivered to the Trustee, which is hereby authorized and  
requested to authenticate and deliver the Bonds to the  
Placement Agent for the benefit of the original  
purchasers in accordance with and upon compliance with  
the provisions of the Indenture.

Section 9. Bond Counsel. Kutak Rock is hereby  
appointed Bond Counsel in connection with the issuance  
and sale of the Bonds.

Section 10. The Placement Agreement. The Placement  
Agreement is hereby approved in the form submitted to  
this meeting, and a copy of the Placement Agreement shall  
be filed with the minutes of this meeting. The Mayor and  
the Clerk are hereby authorized and directed to execute  
and deliver the Placement Agreement in substantially the



1 form herein approved with such additions, deletions and  
2 modifications thereto as may be approved under the Act,  
3 the execution of the Placement Agreement being conclusive  
evidence of such approval and of the approval of the  
Common Council.

4 Section 11. The Loan Agreement. The Loan Agreement  
5 is hereby approved in the form submitted to this meeting,  
6 a copy of which shall be filed with the minutes of this  
7 meeting. The Mayor and the Clerk are hereby authorized  
8 and directed to execute and deliver the Loan Agreement in  
9 substantially the form herein approved with such  
additions, deletions and modifications thereto as may be  
approved under the Act, the execution of the Loan  
Agreement being conclusive evidence of such approval and  
of the approval of the Common Council.

10 Section 12. Preliminary Placement Memorandum. The  
11 use by the Placement Agent of the Preliminary Placement  
12 Memorandum in connection with the placement of the Bonds  
13 by the Placement Agent is hereby approved, and the Common  
14 Council hereby authorizes the preparation and use of a  
15 final Placement Memorandum containing such additions,  
deletions and modifications to the Preliminary Placement  
Memorandum as may be approved by the City as evidenced by  
the signature of the Mayor thereon. The Mayor is hereby  
authorized and directed to execute and deliver the final  
Placement Memorandum.

16 Section 13. Blue Sky Survey. The Mayor and the  
17 Clerk are hereby authorized in the name and on behalf of  
18 the City to take any and all action which the Placement  
19 Agent shall request and which the Mayor and the Clerk may  
20 deem necessary or advisable with the advice of counsel  
21 for the City in order to effect the registration or  
22 qualification (or exemption therefrom) of the Bonds for  
23 issue, offer, sale or trade under the Blue Sky or  
24 securities laws of any of the states of the United States  
25 of America and in connection therewith, to execute,  
26 acknowledge, verify, deliver, file or cause to be  
published any applications, reports, consents to service  
of process and other papers and instruments which may be  
required under such laws, and to take any and all further  
action which he may deem necessary or advisable in order  
to maintain any such registration or qualification for as  
long as the Mayor and the Clerk deem necessary or as  
required by law or by the Placement Agent, provided,  
however, the Mayor and the Clerk need not consent to  
service of process in any jurisdiction other than the  
State of Indiana.

27 Section 14. Other Action. The Mayor and the Clerk  
28 are hereby authorized and directed to execute and  
29 deliver, in the name and on behalf of the City, any and  
30 all additional documents and instruments necessary or  
31 proper to do and cause to be done any and all acts and  
things necessary or proper for carrying out the  
transactions contemplated by this Ordinance (including  
the preambles hereto and the documents mentioned herein)  
and the issuance and sale of the Bonds and securing of  
the Bonds.

32 Section 15. No Personal Liability. No stipulation,  
obligation or agreement herein contained or contained in  
the Indenture, the Placement Agreement, the Loan  
Agreement, the Bonds or in any other agreement or  
document executed on behalf of the City shall be deemed  
to be a stipulation, obligation or agreement of any  
member of the Common Council, officer, agent or employee



1 of the City in his individual capacity, and no such  
2 member of the Common Council, officer, agent or employee  
3 shall be personally liable on the Bonds or be subject to  
4 personal liability or accountability by reason of the  
5 issuance thereof.

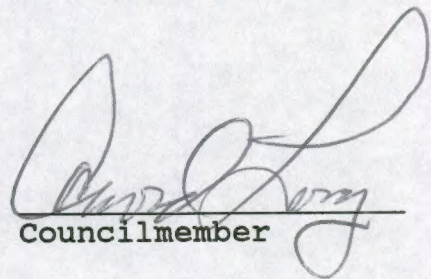
6 Section 16. Action Approved and Confirmed. All  
7 acts and doings of the officers of the City which are in  
8 conformity with the purposes and intent of this Ordinance  
9 and in the  
10 furtherance of the issuance of the Bonds and the  
11 execution, delivery and performance of the documents and  
12 agreements authorized hereby are in all respects approved  
13 and confirmed.

14 Section 17. Severability. If any provision of this  
15 Ordinance shall be held or deemed to be illegal,  
16 inoperative or unenforceable, the same shall not affect  
17 any other provision or cause any other provisions to be  
18 invalid, inoperative or unenforceable to any extent  
19 whatsoever.

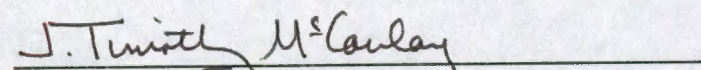
20 Section 18. Repealer. Except as provided in  
21 Section 20 hereof, any ordinances, resolutions or orders  
22 or parts thereof in conflict with this Ordinance are to  
23 the extent of such conflict hereby repealed.

24 Section 19. Inspection Copies. Two copies of the  
25 Indenture, Loan Agreement, Placement Agreement and  
26 Preliminary Placement Memorandum incorporated into this  
27 Ordinance were duly filed in the Office of the Clerk of  
28 the City and are available for public inspection in  
29 accordance with Section 36-1-5-4 of the Indiana Code.

30 Section 20. Effective Date. This Ordinance shall  
31 be in full force and effect from and after its passage,  
32 provided, the provisions of the ordinance pursuant to  
33 which the Prior Bonds were issued shall remain in effect  
34 and shall supersede the provisions of this Ordinance in  
35 the event of any conflict with this Ordinance until such  
36 time as the Bonds are issued.

  
Councilmember

APPROVED AS TO FORM  
AND LEGALITY

  
J. Timothy McCaulay  
City Attorney



Read the first time in full and on motion by \_\_\_\_\_,  
seconded by \_\_\_\_\_, and duly adopted, read the second time by \_\_\_\_\_,  
title and referred to the Committee on \_\_\_\_\_ (and the  
City Plan Commission for recommendation) and Public Hearing to be held after  
due legal notice, at the Common Council Conference Room 128, City-County  
Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_, day  
of \_\_\_\_\_, 19\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATED: \_\_\_\_\_

SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Long,  
seconded by \_\_\_\_\_, and duly adopted, placed on its passage.  
PASSED ~~LOST~~ by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
TOTAL VOTES	<u>7</u>			<u>2</u>
BRADBURY	<u>✓</u>			
EDMONDS	<u>✓</u>			
GiaQUINTA	<u>✓</u>			
HENRY				<u>✓</u>
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT				<u>✓</u>
TALARICO	<u>✓</u>			

DATED: 7-13-93

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL)

(ZONING)

ORDINANCE

RESOLUTION NO.

59-93

on the 13th day of July, 1993

ATTEST:

(SEAL)

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Mark C. GiaQuinta  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the 14th day of July, 1993,  
at the hour of 11:00 o'clock A. M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 15th day of July,  
1993, at the hour of 12:20 o'clock P. M., E.S.T.

Paul Helmke  
PAUL HELMKE, MAYOR





# THE CITY OF FORT WAYNE



Paul Helmke  
Mayor

## MEMORANDUM

### LAW DEPARTMENT

TO: MEMBERS OF COMMON COUNCIL

FROM: J. TIMOTHY MCCAULAY, CORPORATION COUNSEL

DATE: July 9, 1993

SUBJECT: HEALTHQUEST REALTY X ISSUE REFUNDING

J-93-07-01

This transaction is a refunding of \$3,720,000 in outstanding bonds issued in 1983. The proceeds of the prior issue were loaned to Health Quest Realty X for the purpose of acquiring, improving and equipping a skilled care facility situated on an 11.71 acre tract of land located at 2785 Maplecrest Road, Fort Wayne, Indiana; which facility contains 52 skilled care beds and 92 intermediate care beds.

In addition, this transaction involves the issuance of \$345,000 in new bonds. The new bonds are necessary because the refunding is limited to the outstanding amount of the bonds. The new bonds would be subject to federal income taxation.

This transaction is a limited obligation of the City. The City has no obligation to repay the bonds from any source other than the revenue received under the Loan Agreement with Health Quest Realty X.

The developer wishes to recall the outstanding bonds by the first week of September, 1993, so the bond sale needs to be closed by the first week of August, 1993. Therefore, the developer has requested that the Council suspend its rules and pass this ordinance on the date of introduction.

A public hearing on this transaction has been scheduled for July 13, 1993, at 5:30 PM.

The documents referred to in the ordinance have been reviewed by Counsel for the City and found to be in proper form.

JTM:dcb



DIGEST SHEET

TITLE OF ORDINANCE ORDINANCE

DEPARTMENT REQUESTING ORDINANCE CONTROLLER'S OFFICE

SYNOPSIS OF ORDINANCE AUTHORIZES THE ISSUANCE OF \$3,720,000 IN  
REFUNDING BONDS AND \$345,000 IN NEW BONDS IN CONNECTION WITH  
HEALTHQUEST REALTY X'S PROJECT, A SKILLED CARE FACILITY LOCATED AT  
2785 MAPLECREST ROAD. THE PRIOR ISSUE WAS IN 1983.

EFFECT OF PASSAGE REFUNDING AND NEW BONDS AUTHORIZED.

EFFECT OF NON-PASSAGE REFUNDING AND NEW BONDS NOT AUTHORIZED.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) NO DIRECT  
CITY MONEY IS INVOLVED AS THE BONDS ARE PAYABLE SOLELY FROM THE  
PROCEEDS OF A LOAN AGREEMENT WITH HEALTHQUEST REALTY X AND FROM NO  
OTHER SOURCE.

ASSIGNED TO COMMITTEE (PRESIDENT) \_\_\_\_\_



SUSPENSION OF RULES

BILL NO. S-93-07-01

COUNCILMEMBER Long, MOVED TO SUSPEND THE RULES  
FOR THE PASSAGE OF BILL NO. S-93-07-01, AT THE COMMON COUNCIL  
MEETING OF THE CITY OF FORT WAYNE, INDIANA, HELD ON THE 13th  
DAY OF July, 1993, SAID MOTION WAS SECONDED BY  
COUNCILMEMBER Sam Talarico, AND DULY PASSED BY UNANIMOUS  
VOTE OF ALL LEGALLY ELECTED MEMBERS OF THE COMMON COUNCIL. THE ABOVE  
BILL NO. S-93-07-01 WAS THEN PLACED ON PASSAGE.

DATED: 7-13-93

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Mark C. GiaQuinta  
PRESIDING OFFICER

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>7</u>			<u>2</u>
<u>BRADBURY</u>	<u>Bradbury</u>			
<u>EDMONDS</u>	<u>Edmonds</u>			
<u>GiaQUINTA</u>	<u>Mark C. GiaQuinta</u>			
<u>HENRY</u>				<u>✓</u>
<u>LONG</u>	<u>Long</u>			
<u>LUNSEY</u>	<u>Lunsey</u>			
<u>RAVINE</u>	<u>Robert Ravine</u>			
<u>SCHMIDT</u>				<u>✓</u>
<u>TALARICO</u>	<u>Sam Talarico</u>			

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA  
ON July 13, 1993, BILL NO. S-93-07-01

ATTEST

DATED: 7-13-93

(SEAL)  
Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK



BILL NO. S-93-07-01

REPORT OF THE COMMITTEE ON  
FINANCE

ARCHIE L. LUNSEY & DONALD J. SCHMIDT - CO-CHAIRPERSONS  
HENRY, EDMONDS, LONG

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS  
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) HEALTH QUEST REALTY X  
HEALTH CARE TAXABLE BONDS

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

All Council members

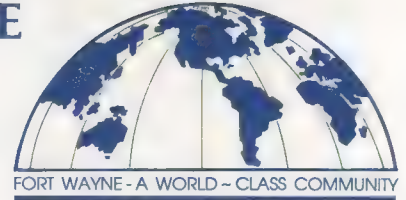
DATED: 7-13-93.

Sandra E. Kennedy  
City Clerk





# THE CITY OF FORT WAYNE



Paul Helmke  
Mayor

**NOTICE OF PUBLIC HEARING ON THE  
PROPOSED REFUNDING BOND ISSUE BY THE  
CITY OF FORT WAYNE, INDIANA**

NOTICE IS HEREBY GIVEN THAT the City of Fort Wayne, Indiana (the "City"), will hold a public hearing for the issuance of the City's Health Care Facilities Revenue Refunding Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993A in an amount not to exceed \$4,000,000 (the "1993 Bonds"). Pursuant to the Title 36, Article 7, Chapter 12 of the Indiana Code, as amended (the "Act"), the City issued its \$4,470,000 Health Care Facilities Revenue Refunding Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series A (the "Prior Bonds") in 1983 to finance a skilled home facility containing 144 skilled and intermediate care beds ("Project"). The Project is located at 2785 Maplecrest Road, Fort Wayne, Indiana, and is owned by Health Quest Realty X, an Indiana general partnership (the "Owner"). The proceeds of the 1993 Bonds will be loaned by the City to the Owner to refund and prepay the Prior Bonds. The public hearing will be held at 5:30 pm on July 13, 1993 before the Common Council for the City of Fort Wayne, Indiana at the City-County Building, Room 128, One Main Street, Fort Wayne, Indiana. The 1993 Bonds shall not be a debt of the City, the State of Indiana or any political subdivision thereof and neither the City nor the State of Indiana or any political subdivision thereof shall be liable thereon, nor in any event shall the 1993 Bonds be required to be paid out of any funds or properties other than those received by the City from the Owner. The 1993 Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

Any person interested in the issuance of the 1993 Bonds may appear at such time and place and be heard.

Sandra E. Kennedy,  
CLERK, CITY OF FORT WAYNE, INDIANA

An Equal Opportunity Employer  
One Main Street, Fort Wayne, Indiana 46802



PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of type in which the body of the advertisement is set)  
-- number of equivalent lines

Head -- number of lines

Body -- number of lines

Tail -- number of lines

Total number of lines in notice

COMPUTATION OF CHARGES

38 lines, 1 columns wide equals 38 equivalent lines

at .33 cents per line

\$ 12.54

Additional charge for notices containing rule or tabular work  
(50 percent of above amount)

Charge for extra proofs of publication (\$1.00 for each proof in excess of two)

TOTAL AMOUNT OF CLAIM

\$ 12.54

DATA FOR COMPUTING COST

Width of single column 12.5 ems

Number of insertions 1

Size of type 6 point

Pursuant to the provisions and penalties of Chapter 155, Acts 1953,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date: June 30, 19 93

Title: Clerk

PUBLISHER'S AFFIDAVIT

NOTICE OF PUBLIC HEARING ON THE PROPOSED REFUNDING BOND ISSUE BY THE CITY OF FORT WAYNE, INDIANA

NOTICE IS HEREBY GIVEN THAT the City of Fort Wayne, Indiana (the "City"), will hold a public hearing for the issuance of the City's Health Care Facilities Revenue Refunding Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993A in an amount not to exceed \$4,000,000 (the "1993 Bonds"). Pursuant to the Title 36, Article 7, Chapter 2 of the Indiana Code, as amended (the "Act"), the City issued its \$4,470,000 Health Care Facilities Revenue Refunding Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series A (the "Prior Bonds") in 1983 to finance a skilled home facility containing 144 skilled and intermediate care beds ("Project"). The Project is located at 2785 Maplecrest Road, Fort Wayne, Indiana, and is owned by Health Quest Realty X, an Indiana general partnership (the "Owner"). The proceeds of the 1993 Bonds will be loaned by the City to the Owner to refund and prepay the Prior Bonds. The public hearing will be held at 5:30 pm on July 13, 1993 before the Common Council for the City of Fort Wayne Indiana at the City-County Building, Room 128, One Main Street, Fort Wayne, Indiana. The 1993 Bonds shall not be a debt of the City, the State of Indiana or any political subdivision thereof and neither the City nor the State of Indiana or any political subdivision thereof shall be liable thereon, nor in any event shall the 1993 Bonds be required to be paid out of any funds or properties other than those received by the City from the Owner. The 1993 Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Any person interested in the issuance of the 1993 Bonds may appear at such time and place and be heard.

29 #427

State of Indiana )  
) ss:  
Allen County )

Personally appeared before me, a notary public in and for said county and state, the undersigned Cindy Gillenwater who, being duly sworn, says that he/she is Clerk of the The Journal-Gazette newspaper of general circulation printed and published in the English language in the (city) (town) of Fort Wayne, IN in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 1 time 6/30/93, the dates of publication being as follows:

Cindy Gillenwater  
Subscribed and sworn to before me this 30th day of June, 19 93

Mary L. Harrison  
Notary Public  
6-14-97

My commission expires: \_\_\_\_\_



City of FW-Law Dept  
(Governmental Unit)

To: The News-Sentinel Dr.  
P.O. Box 100  
Fort Wayne, IN

ALLEN County, Indiana

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of type in which the body of the advertisement is set)  
-- number of equivalent lines \_\_\_\_\_  
Head -- number of lines \_\_\_\_\_  
Body -- number of lines \_\_\_\_\_  
Tail -- number of lines \_\_\_\_\_  
Total number of lines in notice \_\_\_\_\_

COMPUTATION OF CHARGES

38 lines, 1 columns wide equals 38 equivalent lines  
at .33 cents per line \$ 12.54  
Additional charge for notices containing rule or tabular work (50 percent of above amount) \_\_\_\_\_  
Charge for extra proofs of publication (\$1.00 for each proof in excess of two) \_\_\_\_\_  
TOTAL AMOUNT OF CLAIM \$ 12.54

DATA FOR COMPUTING COST

Width of single column 12.5 ems  
Number of insertions 1  
Size of type 6 point

Pursuant to the provisions and penalties of Chapter 155, Acts 1953,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Cindy Gillenwater  
Clerk

Date: June 30, 19 93

Title: \_\_\_\_\_

PUBLISHER'S AFFIDAVIT

NOTICE OF PUBLIC HEARING ON THE PROPOSED REFUNDING BOND ISSUE BY THE CITY OF FORT WAYNE, INDIANA  
OTICE IS HEREBY GIVEN THAT the City of Fort Wayne, Indiana (the "City"), will hold a public hearing for the issuance of the City's Health Care Facilities Revenue Refunding Bonds Health Quest Realty Issue (FHA Insured Mortgage) Series 1993A in an amount not to exceed \$4,000,000 (the "1993 Bonds"). Pursuant to the Title 36, Article 7, Chapter 2 of the Indiana Code, as amended (the "Act"), the City issued its \$4,470,000 Health Care Facilities Revenue Refunding Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series A (the "Prior Bonds") in 1993 to finance a skilled home facility containing 144 skilled and intermediate care beds ("Project"). The Project is located at 2785 Maplecrest Road, Fort Wayne, Indiana, and is owned by Health Quest Realty X, an Indiana general partnership (the "Owner"). The proceeds of the 1993 Bonds will be loaned by the City to the Owner to redeem and prepay the Prior Bonds. The public hearing will be held at 5:30 pm on July 13, 1993 before the common Council for the City of Fort Wayne Indiana at the City-County Building, Room 128, One Main Street, Fort Wayne, Indiana. The 1993 Bonds shall not be a debt of the City, the State of Indiana or any political subdivision thereof and neither the City nor the State of Indiana or any political subdivision thereof shall be liable thereon, nor in any event shall the 1993 Bonds be required to be paid out of any funds or properties other than those received by the City from the Owner. The 1993 Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Any person interested in the issuance of the 1993 Bonds may appear at such time and place and be heard.  
--30 #427

State of Indiana )  
) ss:  
Allen County )

Personally appeared before me, a notary public in and for said county and state, the undersigned Cindy Gillenwater who, being duly sworn, says that he/she is Clerk of the The News-Sentinel newspaper of general circulation printed and published in the English language in the (city) (town) of Fort Wayne, IN in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 1 time \_\_\_\_\_, the dates of publication being as follows:

6/30/93

Subscribed and sworn to before me this 30th day of June, 19 93.

Mary L Addison  
Notary Public  
6-14-97

My commission expires: \_\_\_\_\_



In the opinion of Bond Counsel, assuming compliance on a continuing basis with certain requirements of the Internal Revenue Code of 1954, as amended, and with certain provisions of the Internal Revenue Code of 1986, as amended, and subject to the exceptions under "TAX MATTERS" herein, under existing laws, regulations, rulings and judicial decisions, interest on the Series 199<sup>3A</sup> Bonds is excludable from gross income for federal income tax purposes. Interest on the Series 199<sup>3A</sup> Bonds is not a tax preference item directly subject to alternative minimum tax on individuals and corporations. No opinion is expressed as to the excludability from gross income for federal income tax purposes of interest on any Series 199<sup>3A</sup> Bond for any period during which such Series 199<sup>3A</sup> Bond is held by a person who, within the meaning of Section 147 of the Internal Revenue Code of 1986, as amended, is a "substantial user" of facilities financed from Bond proceeds or a "related person." Interest on the Series 199<sup>3B</sup> Bonds is subject to federal income taxation. The interest on the Series 199<sup>3A</sup> Bonds is exempt from taxation by the State of Indiana for all purposes except inheritance taxes and the franchise tax applicable to corporations transacting the business of a financial institution in the State of Indiana. See "TAX MATTERS" herein.

## ▲CITY OF ▲FORT WAYNE, INDIANA

▲\$3,720,000\*

### HEALTH CARE FACILITIES REVENUE REFUNDING BONDS

#### ▲HEALTH QUEST REALTY X ISSUE

(FHA INSURED MORTGAGE)

SERIES 199<sup>3A</sup>

▲\$345,000\*

### HEALTH CARE FACILITIES TAXABLE REVENUE BONDS

#### ▲HEALTH QUEST REALTY X ISSUE

(FHA INSURED MORTGAGE)

SERIES 199<sup>3B</sup>

Dated: ▲August 1, 199<sup>3</sup>

Due as shown below

Initially, interest on the Series 199<sup>3A</sup> Bonds is payable on the first day of each month, or as otherwise described herein. Interest on the Series 199<sup>3B</sup> Bonds is payable on February 1 and August 1 of each year, commencing February 1, 199<sup>4</sup>. The purchasers of the Bonds will not receive certificates representing their interest in the Bonds. The Bonds will be registered in the name of Cede & Co., as registered owner and nominee of The Depository Trust Company, New York, New York, which will act as security depository for the Bonds. The Bonds are issuable as fully registered bonds in the denomination of \$5,000 principal amount, or any multiple thereof. Principal of, and premium, if any, and interest on the Bonds will be payable by Society National Bank, Indiana, as trustee (the "Trustee"), to Cede & Co.

The Bonds are being issued by the ▲City of ▲Fort Wayne, Indiana (the "Issuer"), to refund bonds (the "19<sup>83</sup> Bonds") previously issued by the Issuer the proceeds of which provided money for the funding of a mortgage loan (the "Mortgage Loan") to Health Quest Realty ▲X, an Indiana ▲general partnership (the "Developer"), to finance a ▲skilled home facility located in ▲Fort Wayne, Indiana (the "Project"), owned by the Developer. The Mortgage Loan is insured by the Federal Housing Administration ("FHA"), an organizational unit within the United States Department of Housing and Urban Development ("HUD"), pursuant to Section 232 of the National Housing Act of 1934, as amended.

#### MATURITY SCHEDULE\*

\$▲          ▲          % Series 199<sup>3A</sup> Bonds Due ▲August 1,             
 \$▲          ▲          % Series 199<sup>3B</sup> Bonds Due ▲August 1,             
 Price of all Bonds: ▲          %  
 (Plus accrued interest, if any, to be added)

The Bonds are subject to redemption prior to maturity at the times and to the extent described herein. See "THE BONDS — Redemption" herein.

THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER. NEITHER THE ISSUER NOR ANY PERSONS EXECUTING THE BONDS NOR ANY OTHER MEMBER, OFFICER, OFFICIAL, EMPLOYEE, OR AGENT OF THE ISSUER SHALL BE LIABLE PERSONALLY ON THE BONDS BY REASON OF THE ISSUANCE THEREOF. THE BONDS SHALL NOT BE A DEBT OF THE STATE OF INDIANA OR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN AS A LIMITED OBLIGATION OF THE ISSUER), AND NEITHER THE STATE OF INDIANA OR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN AS A LIMITED OBLIGATION OF THE ISSUER) SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER SPECIFICALLY PLEDGED THERETO. THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY OR THE FEDERAL HOUSING ADMINISTRATION AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

The Bonds are offered when, as and if issued and received by the Placement Agent, subject to the approval of legality by Kuak Rock, Washington, D.C., Bond Counsel. Certain legal matters relating to the Issuer will be passed upon by its counsel, ▲          ; for the Developer by its counsel, Charles Loeser, Esq., South Bend, Indiana; and for the Placement Agent by its counsel, Arter Hadden Haynes & Miller, Washington, D.C. It is expected that the Bonds will be available for delivery to The Depository Trust Company in New York, New York, on or about ▲August           , 199<sup>3</sup>.

**BANK ONE, COLUMBUS, N.A.**  
Placement Agent

▲August           , 1993

\*Preliminary; subject to change.

This Preliminary Private Placement Memorandum and the information contained herein are subject to completion or amendment. Under no circumstances shall this Preliminary Private Placement Memorandum constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.



No dealer, broker, salesman or other person has been authorized by the Placement Agent or the Issuer to give any information or to make any representations with respect to the Bonds other than those contained in this Private Placement Memorandum, and, if given or made, such information or representations must not be relied upon as having been authorized by any of the foregoing. This Private Placement Memorandum does not constitute an offer to sell nor the solicitation of an offer to buy nor will there be any sale of the Bonds by any person in any jurisdiction in which such offer, solicitation or sale is not authorized or in which the person making such offer, solicitation or sale is not qualified to do so or to any person to whom it is unlawful to make such offer, solicitation or sale. The information set forth herein has been obtained from sources that are believed to be reliable, but it is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation of the Placement Agent or the Issuer. The information and expressions of opinion stated herein are subject to change without notice. The delivery of this Private Placement Memorandum will not, under any circumstances, create any implication that there has been no change in the information or opinions set forth herein since the date hereof.

IN CONNECTION WITH THE OFFERING OF THE BONDS, THE PLACEMENT AGENT MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF SUCH BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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## PRIVATE PLACEMENT MEMORANDUM

★CITY OF ★FORT WAYNE, INDIANA

★\$3,720,000\*

HEALTH CARE FACILITIES REVENUE REFUNDING BONDS

★HEALTH QUEST REALTY X ISSUE

(FHA INSURED MORTGAGE)

SERIES 199★3A

★\$345,000\*

HEALTH CARE FACILITIES TAXABLE REVENUE BONDS

★HEALTH QUEST REALTY X ISSUE

(FHA INSURED MORTGAGE)

SERIES 199★3B

### INTRODUCTION

This Private Placement Memorandum is provided to furnish information in connection with the issuance and sale by the ★City of ★Fort Wayne, Indiana (the "Issuer") of ★\$3,720,000\* aggregate principal amount of its Health Care Facilities Revenue Refunding Bonds, ★Health Quest Realty X Issue (FHA Insured Mortgage) Series 199★3A (the "Series 199★3A Bonds") and of ★\$345,000\* aggregate principal amount of its Health Care Facilities Taxable Revenue Bonds, ★Health Quest Realty X Issue (FHA Insured Mortgage) Series 199★3B (the "Series 199★3B Bonds" and, collectively with the Series 199★3A Bonds, the "Bonds"). The Bonds will be issued pursuant to Title 36, Article 7, Chapter 12 of the Indiana Code, as amended (the "Act"), and a Trust Indenture dated as of ★August 1, 199★3 (the "Indenture"), between the Issuer and Society National Bank, Indiana, as trustee (the "Trustee").

The Bonds are being issued by the Issuer to provide money to refund the Issuer's Health Care Facilities Revenue Bonds, ★Health Quest Realty X Issue (FHA Insured Mortgage), Series A (the "19★83 Bonds") and to pay certain costs of issuance of the Bonds. The 19★83 Bonds were issued by the Issuer to finance a mortgage loan (the "Mortgage Loan") made to Health Quest Realty ★X, an Indiana ★general partnership (the "Developer"), to finance the acquisition and rehabilitation of a ★skilled home facility located in the ★City of Fort Wayne, Indiana (the "Project").

The Mortgage Loan is evidenced by the Developer's mortgage note (the "Mortgage Note") and secured by a first lien mortgage (the "Mortgage") on the Project. The Mortgage Note has been endorsed for insurance by the Federal Housing Administration ("FHA"), an organizational unit within the United States Department of Housing and Urban Development ("HUD"), pursuant to the provisions of Section 232 of the National Housing Act of 1934, as amended (the "National Housing Act"). Under applicable regulations, mortgage insurance benefits are payable, at the option of HUD, either in debentures issued by HUD ("FHA Debentures") or in cash. See "FHA INSURANCE" herein. The Mortgage Loan is to be refinanced and the 19★83 Bonds to be refunded pursuant to a Loan Agreement, dated as of ★August 1, 199★3 (the "Loan Agreement"), between the Issuer and the Developer.

The Bonds will be secured by a pledge of all right, title and interest of the Issuer in (i) the Loan Agreement, the Mortgage Loan and the Mortgage Note, the Mortgage and all other security therefor or certificates or instruments evidencing the same, and all amendments, modifications and renewals thereof, and all FHA mortgage insurance or casualty insurance proceeds or condemnation awards payable with respect thereto, and any interest earnings thereon (reserving, however, certain rights of the Issuer); (ii) any money held under the Indenture by the Trustee (except for the Rebate Fund), including the proceeds of the Bonds and the interest, profits and other income derived from the investment thereof; and (iii) all

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\*Preliminary; subject to change



funds, money and securities and any and all other rights and interests in property under the Indenture (except funds held in the Rebate Fund thereunder) from time to time conveyed, mortgaged, pledged, assigned or transferred as and for additional security for the Bonds by the Issuer.

Brief descriptions of the Bonds, the security for and sources of payment of the Bonds, the Issuer, the Developer, the Project, the FHA Insurance, the Indenture, the Loan Agreement, the Mortgage Note and Mortgage, and other documents are included in this Private Placement Memorandum. All references to such documents and agreements are qualified in their entirety by reference to such documents and agreements, copies of which are available for inspection at the office of the Trustee. The order and placement of information in this Private Placement Memorandum are not to be deemed a determination of relevance, materiality or importance, and this Private Placement Memorandum must be considered in its entirety.

Capitalized terms used herein and not otherwise defined are to have the same meaning ascribed to them as in the Indenture.

## THE ISSUER

The Issuer is a municipal corporation and a political subdivision of the State of Indiana.

## THE BONDS

The Bonds are available in book-entry form only. See "BOOK-ENTRY ONLY SYSTEM" below. So long as Cede & Co. is the registered owner of the bonds, as nominee of The Depository Trust Company, New York, New York ("DTC"), references herein to the Bondholders or registered owners of the Bonds mean Cede & Co. and not the beneficial owners of the Bonds.

### General

The Bonds are issuable in denominations of \$5,000 principal amount or any integral multiple thereof. The Bonds will be dated as of ~~August 1, 1993~~. The Bonds will mature on the dates and in the amounts and bear interest from their dates at the rates set forth on the cover page hereof, except that interest accruing on the Series 199~~3~~A Bonds prior to the Closing Date will not be paid. Initially, interest on the Series 199~~3~~A Bonds is payable on the first day of each month, and interest on the Series 199~~3~~B Bonds will be payable semiannually on February 1 and August 1 of each year, commencing February 1, 199~~4~~ (each a "Payment Date"), in accordance with the provisions of the Indenture, whether at maturity, upon acceleration or otherwise as provided therein. Upon the conditions set forth in the Indenture, the interest on the Series 199~~3~~A Bonds will be payable on February 1 and August 1, instead of on the first day of each month. Interest will be calculated and due on a basis of a 360-day year consisting of twelve 30-day months. Principal of and premium, if any, and interest on the Bonds will be payable by the Trustee to Cede & Co.

### Redemption

Optional Redemption. The Bonds are subject to redemption at any time at the option of the Developer from optional prepayments on the Mortgage Note or from proceeds of refunding bonds, in either case in an amount not to exceed ~~\$~~ in any calendar year, at a redemption price equal to the principal amount thereof, without premium, plus accrued interest to the redemption date.

The Bonds are also subject to optional redemption as a whole at any time or in part on any February 1 or August 1, following and to the extent of optional prepayments on the Mortgage Loan in excess of ~~\$~~ in any calendar year in accordance with the prepayment restrictions set forth therein by the Developer or from the proceeds of refunding bonds at the redemption prices set forth in



the table below, expressed as percentages of their principal amount of the Bonds, plus accrued interest to the redemption date:

<u>Redemption Dates</u>	<u>Redemption Prices</u>
Closing Date, through July 31, 199 <del>4</del>	102%
August 1, 199 <del>4</del> , through July 31, 199 <del>5</del>	101½
August 1, 199 <del>5</del> , through July 31, 199 <del>6</del>	101
August 1, 199 <del>6</del> , through July 31, 199 <del>7</del>	100½
August 1, 199 <del>7</del> , and thereafter	100

In the event of an optional redemption of Bonds on a date on which the redemption price includes a redemption premium, the Trustee is not to give notice of such redemption unless (i) the Trustee has received an unqualified opinion of nationally recognized bankruptcy counsel, acceptable to the Trustee, to the effect that payment of such money to Bondowners would not constitute a voidable preference under Section 547 or be recoverable under Section 550(a) of the United States Bankruptcy Code in the event of the bankruptcy of the Developer; and (ii) the Trustee has received the prepayment of the Mortgage Loan.

Special Mandatory Redemption. The Bonds are subject to Special Mandatory Redemption prior to maturity (i) as a whole or in part, at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the redemption date in direct order of maturity on each February 1 or August 1 from excess revenues transferred from the Bond Fund to the Redemption Fund for such purpose, and (ii) as a whole, on any February 1 or August 1 for which timely notice of redemption can be given, if the sum of the amount held in the Bond Fund, the Expense Fund, the Debt Service Reserve Fund and the Redemption Fund equals or exceeds the redemption price of the Bonds then outstanding, plus the amount of expenses then payable under the Indenture. See "THE INDENTURE — Application of Net Revenues; Bond Fund" herein.

Casualty and Condemnation Redemption. The Bonds are subject to redemption as a whole or in part on the earliest practicable date for which proper notice of redemption can be given, at a redemption price equal to the principal amount thereof, plus accrued interest to the date fixed for redemption to the extent the proceeds of any condemnation award or insurance recovery are applied to the prepayment of the Mortgage Note.

Extraordinary Redemption From FHA Mortgage Insurance Benefits in Cash. To the extent that FHA mortgage insurance benefits are paid to the Trustee in cash, the Trustee is to redeem the Bonds, as a whole or in part, on the earliest practicable date for which proper notice of redemption can be given at a redemption price equal to the principal amount thereof, plus accrued interest to the date fixed for redemption.

Redemption After Receipt of FHA Mortgage Insurance Benefits in Debentures. If FHA Mortgage Insurance benefits are paid to the Trustee in FHA Debentures and such FHA Debentures can be sold or tendered to HUD at a price sufficient (together with other amounts held under the Indenture other than the Rebate Fund) to redeem the Bonds, the Trustee is to redeem all the Bonds therefrom on the earliest practicable date for which proper notice of redemption can be given at a redemption price equal to the principal amount thereof, plus accrued interest to the date fixed for redemption.

Redemption in the Event of Mortgage Loan Default or Bankruptcy. The Bonds are to be called for redemption as a whole or in part without premium at a redemption price of 100% of the principal amount, plus accrued interest to the date of redemption in the event that prepayment of the Mortgage Note is required to be made (i) pursuant to applicable rules, requirements or policies of HUD in order to avoid a FHA mortgage insurance claim or otherwise or (ii) without premium while under the supervision of a trustee in bankruptcy proceedings.



Redemption Due to Reduction in Debt Service Reserve Fund. In the event of a redemption of Bonds as a result of a reduction in the principal balance of the Mortgage Loan, the Trustee is to transfer from the Debt Service Reserve Fund to the Redemption Fund any amount by which the balance maintained following such redemption in the Debt Service Reserve Fund exceeds the Debt Service Reserve Fund Requirement (as such term is defined under the caption "THE INDENTURE — Application of Net Revenues; Bond Fund" herein); provided, however, that if the Mortgage Loan is in default, no such redemption is to occur until full FHA mortgage insurance proceeds have been received by the Trustee. Pursuant to special mandatory redemption provisions above, the Trustee is then required to redeem Bonds in an amount equal, as nearly as practicable, to the amount of the funds transferred to the Bond Fund.

Partial Redemption; Selection of Bonds. In the event of a redemption of less than all the outstanding Bonds of a particular maturity, the particular Bonds to be redeemed within a maturity are to be selected by the Trustee by lot.

In the event of a redemption of less than all the outstanding Bonds, the Trustee is to redeem the Bonds in direct order of maturity. Accordingly, Series 199-3B Bonds are to be redeemed prior to the redemption of any Series 199-3B Bonds.

Bonds are to be redeemed only in a principal amount or maturity amount of \$5,000 or an integral multiple thereof.

Upon surrender of any Bond redeemed in part only, the Issuer is to execute and the Trustee is to authenticate and deliver to the holder thereof, without expense to such holder a new Bond or Bonds of the same maturity and series and in authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bonds surrendered.

Notice of Redemption. Notice of redemption is to be given by the Trustee (i) to DTC or its nominee or (ii) if DTC or its nominee is no longer the Owner of the Bonds, to the then-registered Owners by mail, not less than 30 days nor more than 45 days before the redemption date to each Owner of Bonds to be redeemed at the last address shown on the registration books kept by the Trustee, as Bond Registrar.

If money is on deposit in the Redemption Fund held under the Indenture to pay the redemption price of the Bonds called for redemption on a redemption date, Bonds thus called and provided for will not bear interest after such redemption date and will not be considered to be outstanding or to have any other rights under the Indenture other than the right to receive payment. No payment of principal will be made by the Trustee on any Bonds or portions thereof called for redemption until such Bonds or portions thereof have been delivered for payment or cancellation or the Trustee has received the items required by the Indenture with respect to any mutilated, lost, stolen or destroyed Bonds.

Notice of such redemption also is to be sent by certified mail, return receipt requested, overnight delivery service or other secure means, postage prepaid, to any holder of \$1,000,000 or more in aggregate principal amount of Bonds to be redeemed, and to certain municipal registered securities depositories (described in the Indenture) that are known to the Trustee to be holding Bonds and to at least two of the national information services (described in the Indenture) that disseminate securities redemption notices; provided that neither failure to receive such notice nor any defect in any notice so mailed will affect the sufficiency of the proceedings for the redemption of such Bonds.

#### **BOOK-ENTRY ONLY SYSTEM**

The Bonds will be available in book-entry form only, in the principal amount of \$5,000 or any multiple thereof. Purchasers of the Bonds will not receive certificates representing their interests in the Bonds purchased.



**DTC and Its Participants.** The Bonds will be held by The Depository Trust Company, New York, New York ("DTC"), as securities depository. The ownership of one fully registered Bond for each maturity is registered in the name of Cede & Co., as nominee for DTC. DTC is a limited-purpose trust company organized under New York banking law, a "banking organization" within the meaning of New York banking law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC was created to hold securities of its participants (the "DTC Participants") and to facilitate the clearance and settlement of securities transactions among DTC Participants in such securities through electronic book-entry changes in accounts of the DTC Participants, thereby eliminating the need for physical movement of securities certificates. DTC Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations, some of whom (and/or their representatives) own DTC. Access to the DTC system is also available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a DTC Participant, either directly or indirectly.

**Purchase of Ownership Interests; Notices.** Ownership interests in the Bonds may be purchased by or through DTC Participants. Such DTC Participants and the persons for whom they acquire interests in the Bonds as nominees will not receive certificated Bonds, but each DTC Participant is to receive a credit balance in the records of DTC in the amount of such DTC Participant's interest in the Bonds, which is to be confirmed in accordance with DTC's standard procedures. Each such person for whom a DTC Participant acquires an interest in the Bonds, as nominee, may desire to make arrangements with such DTC Participant to receive a credit balance in the records of such DTC Participant, and may desire to make arrangements with such DTC Participant to have all notices of redemption or other communications to DTC, which may affect such persons, be forwarded in writing by such DTC Participant and to have notification made of all interest payments. Neither the Issuer nor the Trustee will have any responsibility or obligation to such DTC Participants or the persons for whom they act as nominees with respect to the Bonds in respect of the accuracy of any records maintained by DTC or any DTC Participant; the payment by DTC or any DTC Participant of any amount in respect of the principal or redemption price of or interest on the Bonds; any notice that is permitted or required to be given to Bondholders under the Indenture; the selection by DTC or any DTC Participant of any person to receive payment in the event of a partial redemption of the Bonds; or any consent given or other action taken by DTC as Bondholder. In this Official Statement, the term "Beneficial Owner" includes the person for whom the DTC Participant acquires an interest in the Bonds.

SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF THE BONDS, AS NOMINEE OF DTC, REFERENCE HEREIN TO THE BONDHOLDERS OR REGISTERED OWNER OF THE BONDS MEANS CEDE & CO., NOT THE BENEFICIAL OWNER OF THE BONDS.

DTC is to receive payments from the Trustee to be remitted to the DTC Participants for subsequent disbursement to the Beneficial Owner. The ownership interest of each Beneficial Owner in the Bonds is to be recorded on the records of the DTC Participants, whose ownership interests are to be recorded on a computerized book-entry system operated by DTC.

When reference is made to any action that is required or permitted to be taken by the Beneficial Owner, such reference only relates to those permitted to act (by statute, regulation or otherwise) on behalf of such Beneficial Owner for such purposes. When notices are given, they are to be sent by the Trustee to DTC only. DTC is responsible for notifying Participants, and Participants and Indirect Participants are responsible for notifying the Beneficial Owner. Neither the Trustee nor the Issuer is responsible for sending notices to Beneficial Owner.

**Transfer and Exchange of Ownership Interests.** Beneficial Owners are to receive a written confirmation of their purchase detailing the terms of the Bonds acquired. Transfers of ownership interests in the Bonds are to be accomplished by book entries made by DTC and by the DTC Participants who act on behalf of the Beneficial Owner. Beneficial Owner will not receive certificates representing their

ownership interest in the Bonds, except as specifically provided in the Indenture. Interest and principal are to be paid by the Trustee to DTC, then paid by DTC to the DTC Participants and thereafter paid by the DTC Participants to the Beneficial Owner when due.

For every transfer and exchange of the Bonds, the Beneficial Owner may be charged a sum sufficient to cover any tax, fee or other government charge that may be imposed in relation thereto.

**Discontinuance of DTC Services.** DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the Issuer and the Trustee and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is not a successor securities depository) certificated Bonds are required to be delivered as described in the Indenture.

The Issuer may determine that continuation of the system of book-entry transfers through DTC (or a successor securities depository) is not in the best interest of the Beneficial Owner. In such event, certificated Bonds are required to be delivered as described in the Indenture.

In the event that the Book-Entry Only System is discontinued, the Trustee is required to send a notice to Bondholders by first-class mail stating that the following provisions will be applicable to the Bonds: Bonds may be exchanged for an equal aggregate principal amount of corresponding Bonds in other authorized denominations and of the same maturity ("Replacement Bonds"), upon surrender thereof at the principal corporate trust office of the Trustee. The transfer of any Bond may be registered on the books maintained by the Trustee for such purpose only upon the surrender thereof to the Trustee with a duly executed assignment in form satisfactory to the Trustee. For every exchange or transfer or registration of Bonds, the Issuer and the Trustee may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer, but no other charge may be made to the Beneficial Owner for any exchange or registration of transfer of the Bonds. The Trustee will not be required to transfer or exchange any Bond after mailing of notice of redemption of such Bond has been made.

## SOURCES AND USES OF FUNDS\*

The proceeds of the Bonds and other funds available on the date of delivery of the Bonds (other than accrued interest which will be deposited in the Bond Fund) and the uses thereof are anticipated to be approximately as follows:

### Sources

Principal Amount of Series 199 <del>4</del> 3A Bonds	\$ <del>4</del> 3
Principal Amount of Series 199 <del>4</del> 3B Bonds	\$ <del>4</del> 3
TOTAL	\$ <del>4</del> 3

### Uses

Deposit to escrow to defease 19 <del>4</del> 3 <del>3</del> Bonds <sup>1</sup>	\$ <del>4</del> 3
TOTAL	\$ <del>4</del> 3

<sup>1</sup> Upon the defeasance of the 19~~4~~3~~3~~ Bonds, the Trustee is to deposit amounts received from the Developer as follows: ~~\$~~ to the Debt Service Reserve Fund and ~~\$~~ to the Costs of Issuance Fund.

\*Preliminary; subject to change.



## SECURITY AND SOURCES OF PAYMENT FOR THE BONDS

### Pledge Under the Indenture

Under the terms of the Indenture, the Bonds are secured by a pledge of and first lien on all of the Issuer's right, title and interest in, to and under:

(i) the Net Revenues (as defined herein), the Loan Agreement, the Mortgage Loan and the Mortgage Note, the Mortgage and all other security therefor or certificates or instruments evidencing the same, and all amendments, modifications and renewals thereof, and any interest earnings thereon;

(ii) any money held under the Indenture by the Trustee, except for money and investment securities held by the Trustee (i) for the redemption of Bonds for which notice of redemption has been duly given, (ii) for the payment of the principal of, premium, if any, and interest on the Bonds that have become due and payable but not yet presented to the Trustee for such payment or (iii) in the Rebate Fund; and

(iii) except for the Rebate Fund, all funds, money and securities and any and all other rights and interests in property under the Indenture from time to time conveyed, mortgaged, pledged, assigned or transferred as and for additional security for the Bonds by the Issuer.

### The Mortgage Note and Mortgage

The Issuer has pledged the Mortgage Note and the Mortgage to the Trustee as security for the Bonds. The Mortgage Note and the Mortgage are non-recourse obligations of the Developer. See "THE MORTGAGE NOTE AND MORTGAGE" herein. Payment of the principal of and interest on the Mortgage Note has been insured by FHA to the extent described herein. See "FHA INSURANCE" herein.

### Limited Obligations

The Bonds are limited obligations of the Issuer. Neither the Issuer nor any persons executing the Bonds nor any other member, officer, official, employee, or agent of the Issuer shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds shall not be a debt of the State of Indiana or any political subdivision thereof (other than as a limited obligation of the Issuer), and neither the State of Indiana or any political subdivision thereof (other than as a limited obligation of the Issuer) shall be liable thereon, nor in any event shall the Bonds be payable out of any funds or properties other than those of the Issuer specifically pledged thereto. The Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. The Bonds are not a debt of the United States of America, the United States Department of Housing and Urban Development or any other federal governmental agency or the Federal Housing Administration and are not guaranteed by the full faith and credit of the United States.

### THE DEVELOPER

The Developer of the Project is Health Quest Realty ✱X, an Indiana ✱ general partnership. ✱

[More to Come]

## THE PROJECT

★[The Project is situated on an 11.71 acre tract of land located at 2785 Maplecrest Road, Fort Wayne, Indiana. The Project, which was constructed by Health Quest Development Corporation contains 52 skilled care beds and 92 intermediate care beds.

The Project contains 53,845 square feet. The building is a wood frame building with a brick and cedar exterior. The building was designed in compliance with state and local building and health ordinances. Construction commenced during October of 1983 and was completed during September of 1984.]

★

[more to come]

## THE TRUSTEE

The Society National Bank, Indiana, of South Bend, Indiana, will serve as Trustee under the Indenture. The Trustee is a national banking association organized under the laws of the United States of America. The Trustee will serve as FHA mortgagee of record and as trustee for the Bonds. The Trustee currently serves as trustee or escrowee for 9 other tax-exempt financings backed by FHA-insured multifamily mortgage loans totalling approximately \$42 million in aggregate principal amount. The Trustee currently serves as trustee for approximately 209 other tax-exempt financings in excess of \$1 billion in aggregate principal amount.

As an organization, Society National Bank, Indiana, is part of Society Corporation with corporate trust offices in Texas, Indiana, Ohio, Michigan and New York. Affiliates of the Trustee serve as trustee/escrow agent on approximately 1,700 bond issues totalling in excess of \$28 Billion. Affiliates of the Trustee also serve as bond registrar/paying agent on 3,800 bond issues totalling in excess of \$23 billion in aggregate principal amount.

## FHA INSURANCE

The Federal Housing Administration has insured the Mortgage Note pursuant to Section 232 of the National Housing Act. Applicable FHA regulations are contained in 24 C.F.R. 232 which, with certain exceptions incorporate by reference the provisions of 24 C.F.R. 207 (covering mortgages insured under Section 207 of the National Housing Act). The following summary is qualified in its entirety by reference to the mentioned sections of the National Housing Act and applicable regulations promulgated thereunder.

The National Housing Act defines an event of default under an FHA-insured mortgage as failure (i) to make any payment due under the mortgage or (ii) to perform any other mortgage covenant if the mortgagee, because of such failure, has accelerated the debt. In the event of a default continuing for a period of 30 days, the Trustee must, in order to preserve its right to full mortgage insurance benefits, give notice to the Federal Housing Commissioner of the default and of its intention to file an insurance claim. Promptly thereafter, the Trustee may take the necessary steps to file a claim for insurance within the periods specified within the regulations. The Indenture requires the Trustee to assign a defaulted mortgage loan to the Commissioner.

In the event of a default on the Mortgage Note, its assignment to FHA and the filing of a claim for FHA insurance, FHA will pay FHA mortgage insurance benefits in cash or FHA Debentures, in an amount equal to the sum of (a) 99% of the unpaid principal amount of the Mortgage Note computed as of the date of default, (b) certain eligible payments (such as taxes, insurance, special assessments and water rates) made by the Trustee and (c) interest on the insurance proceeds from the date of default to the date on which such benefits are paid at the applicable FHA debenture rate (which interest may be



limited if certain notices are not given to FHA or certain steps not taken within the prescribed time periods), less certain amounts which may be realized by the Trustee on the mortgaged property or held by the Trustee for the Developer's account.

The full amount of Mortgage Insurance benefits is not paid until after submission to FHA of the requisite fiscal data to support the claim. The timing of payment is not governed by specific regulations. Current FHA practice, generally, for claims arising after final endorsement, where benefits are requested in cash, is to pay 90% of the claim within three business days of the recordation of the assignment of the Mortgage to FHA and the balance, after FHA audit, within three to nine months. FHA has, however, announced a policy of giving priority to processing of mortgage insurance claims where the mortgages secure tax-exempt bonds.

Funds in the Debt Service Reserve Fund are expected to be sufficient to pay interest on the Bonds for a 12-month period. There is no assurance, however, that such funds will be sufficient to avoid a default on the Bonds if there is a delay in assignment of the defaulted Mortgage Loan to FHA, which could be caused by the bankruptcy of the Developer, or an unusual delay in FHA claim processing due to workload or other factors.

FHA requires the maintenance of casualty insurance on the Project. Failure to maintain such insurance in the required amount may result in partial or total loss of mortgage insurance benefits, in which case a casualty loss could cause a Bond default.

### THE MORTGAGE NOTE AND MORTGAGE

*The following is a brief summary of the Mortgage Note and Mortgage. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Mortgage Note and Mortgage, copies of which are on file with the Trustee.*

The Mortgage Note is a nonrecourse obligation of the Developer (which means that the Developer is not liable for the payment thereof beyond the amount realized upon the security therefor) providing for level monthly payments of principal and interest. In the event of a failure to make a payment when due and the failure to correct such failure by the next due date, the entire amount of the Mortgage Note may be declared due and payable by the Trustee. In the event of a late payment of more than 15 days, the Trustee may charge and collect from the Developer a penalty of up to two percent of the late payment. The Mortgage Note is prepayable only in accordance with the provisions thereof including the payment of premiums.

The Mortgage conveys the Developer's interest in the Project to secure the payment of the Mortgage Note. The Mortgage (including the FHA Regulatory Agreement incorporated therein) requires that:

- (1) fire and casualty insurance be maintained on the Project payable to the Trustee in an amount not less than necessary to comply with the applicable co-insurance percentage but in no event less than 80% of the insurable value or the unpaid balance of the Mortgage Note;
- (2) the mortgage insurance premiums, taxes and utility assessments, fire and casualty insurance premiums, and deposit to the repair and replacement fund established under the Servicing Agreement be paid monthly to the Mortgage Servicer together with the monthly payment on the Mortgage Note;
- (3) the Developer not place any liens on the Project inferior (without FHA consent) or superior to the Mortgage; and

- (4) the Developer maintain the Project in good repair and condition.

## **THE LOAN AGREEMENT**

*The following is a summary of certain provisions of the Loan Agreement. Such summary does not purport to be comprehensive or definitive, and reference is made to such document for a full and complete statement of its terms, a copy of which may be obtained from the Placement Agent during the period that the Bonds are offered and, thereafter, upon request to the Trustee.*

### **The Loan; Refunding**

The Loan Agreement states that, upon the terms and conditions specified therein and in the Indenture, the Issuer is to cause the proceeds of the Bonds to be applied in such manner as to cause the 19~~93~~<sup>83</sup> Bonds to be refunded in full, and to cause the Mortgage Note and the related loan documents (the "Loan Documents") to be delivered and pledged and assigned to the Trustee under the Indenture, in order to secure the full and timely payment of all principal of, premium, if any, and interest on the Bonds when due.

### **Tax Covenants**

The Issuer and the Developer covenant to each other and to the holders of the Bonds that they will neither take any action, nor execute any agreement or other instrument, nor to their knowledge suffer the same to be done, which would adversely affect the validity, enforceability or the exclusion from gross income for federal income tax purposes of the interest on the Series 199~~3A~~<sup>83</sup> Bonds. The Developer covenants that during the period commencing with the date of delivery of the 19~~93~~<sup>83</sup> Bonds and ending three years thereafter, it did not enter into any contract or agreement with any person for the performance of management services for the Project, other than as described in the Loan Agreement, and did not amend any such contract or agreement with respect to the term thereof or the compensation to be paid thereunder, or in any way change the ownership of the Project.

In addition, the Issuer and the Developer each covenant to the owners of the Bonds that they will neither make nor instruct the Trustee to make, any investment or other use of the proceeds of the Bonds that would cause the Series 199~~3A~~<sup>83</sup> Bonds to become arbitrage bonds under the meaning of Section 148 of the Internal Revenue Code of 1986, as amended.

### **Maintenance and Operation of Project; Developer's Existence**

The Developer agrees to cause the Project to be maintained and operated as a nursing home facility in accordance with applicable regulations and standards of the Indiana State Board of Health.

The Developer agrees to maintain its partnership existence, and not to dispose of all or substantially all of its assets or enter into any consolidation or merger unless the transferee, successor or surviving entity is a partnership or corporation organized under the laws of a state within the United States, is qualified to do business in Indiana, and assumes in writing all obligations of the Developer under the Mortgage Note, the Mortgage, and the Loan Agreement.

### **Events of Default and Remedies**

Failure by the Developer to observe and perform any covenant, agreement or obligation contained in the Loan Agreement for a period of 30 days after written notice, specifying such failure and requesting the same to be remedied, has been given to the Developer by the Mortgage Servicer or the Trustee, will constitute an "Event of Default" under the Loan Agreement; provided that if the Mortgage Servicer and the Trustee agree that such failure is of such nature that it can be corrected within a reasonable time, but not within 30 days, and if the Developer promptly institutes corrective action and is diligently pursuing



the same, an Event of Default will be the failure by the Developer to observe and perform such covenant, agreement or obligation within a reasonable time.

The Developer covenants to notify the Issuer, the Trustee and the Mortgage Servicer immediately upon receipt of notice of any default under the Mortgage, the Mortgage Note, or the Loan Agreement.

Upon the occurrence of an Event of Default, in addition to any other rights which the Issuer, the Trustee or the Mortgage Servicer may have, the Issuer, the Trustee or the Mortgage Servicer may withhold further performance under the Loan Agreement and may also take whatever action at law or in equity may appear necessary or desirable to enforce the performance and observation by the Developer of any of its obligations, agreements or covenants under the Loan Agreement and to collect any payments due or to obtain other remedies; provided, however, that prior to commencing any action, suit or proceeding under the Loan Agreement against the Developer, the Issuer or the Trustee, as the case may be, have received the prior written consent of FHA, if required by FHA.

#### **Damage, Destruction and Condemnation**

If, while any Bonds remain outstanding under the Indenture, the Project is damaged or destroyed by fire or other casualty, or the Project or any part thereof is taken by condemnation, the Developer either is to restore the Project as required by the Indenture and Loan Agreement or is to prepay the Mortgage Loan as a whole.

#### **Amendments, Changes and Modification**

The Loan Agreement may not be amended except by an agreement in writing signed in writing by the Developer and the Issuer and consented to by the Trustee in accordance with the Indenture. See "THE INDENTURE — Amendment of Certain Documents" herein.

#### **Non-Recourse Obligation**

The Loan and the Mortgage Note are non-recourse obligations of the Developer, and as a result, the Loan Agreement is not intended to create any personal liability for the "debt" created on account of the issuance of the Bonds and the obligation of the Developer under the Loan Agreement and accordingly the remedies available to the Issuer and the Trustee upon an Event of Default insofar as they relate to the payment of any amounts due under the Loan Agreement are limited to the rights and remedies against the mortgaged property, the rents, issues and profits from the mortgaged property and such other security to secure the repayment of the Loan as is given the Issuer or Trustee under the Indenture, the Loan Agreement and the Mortgage.

### **THE INDENTURE**

*The following is a brief summary of the Indenture. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Indenture, copies of which are on file with the Issuer and the Trustee.*

## **Establishment of Funds**

The following funds and accounts are established by the Trustee under the Indenture:

Bond Fund  
Debt Service Reserve Fund  
Expense Fund  
Redemption Fund  
Rebate Fund  
Costs of Issuance Fund

On the date the Bonds are issued, the Trustee is required to deposit Bond proceeds and other amounts into the funds and accounts under the Indenture as described under "SOURCES AND USES OF FUNDS" herein.

### **Application of Net Revenues; Bond Fund**

The Trustee is to deposit into the Bond Fund all earnings and gains from the investment of money held in under the Indenture (other than on amounts in the Rebate Fund).

The Trustee is to transfer the proceeds from any prepayment of the Mortgage Loan to the Redemption Fund to be used for the redemption of Bonds selected in accordance with the redemption provisions described above under the caption "THE BONDS — Redemption" herein.

On receipt, all other Net Revenues are to be applied to the following order of priority:

- (1) to the Bond Fund to pay the principal of and interest on the Bonds accruing on or before the next February 1 or August 1 as applicable;
- (2) to transfer to the Expense Fund the amount, if any, needed to pay Qualified Expenses;
- (3) so long as the Trustee has not received FHA Debentures in respect of an FHA mortgage insurance claim relating to the Mortgage Loan, to the Debt Service Reserve Fund, an amount necessary to cause the amount on deposit therein to equal the Debt Service Reserve Fund Requirement; and
- (4) commencing February 1, 1994, to the Redemption Fund, any remaining balance to be used for the Special Mandatory redemption of Bonds. See "THE BONDS — Redemption — Special Mandatory Redemption" herein.

"Debt Service Reserve Fund Requirement" means, as of any date of calculation, an amount equal to the sum of 12 months' interest on the original principal amount of the Bonds, plus one month's interest on the unpaid principal balance of the Mortgage Note (initially, \$4,000,000).

"Net Revenues" means all income, revenues, proceeds and other amounts received by the Issuer or the Trustee on or in connection with the Mortgage Loan (including any prepayments thereof) and any and all interest, profits or other income derived from the investment of amounts in any funds or accounts (but not the Rebate Fund) established pursuant to this Indenture, but does not include (i) amounts retained by the Mortgage Servicer as a servicing fee, (ii) certain payments received by the Trustee which are to be applied by the Trustee as mortgagee under the Mortgage, or (iii) any funds held by the Trustee (as mortgagee under the Mortgage) on behalf of the Developer pursuant to the Mortgage or the Regulatory Agreement.



## Expense Fund

The Trustee is to use amounts on deposit in the Expense Fund solely to pay Qualified Expenses, which includes the annual accrued fees and expenses of the Trustee, in an amount not to exceed .125% per annum of the Bonds outstanding, payable semi-annually in advance on each February 1 and August 1 commencing August 1, 1993.

## Debt Service Reserve Fund

On the Closing Date the amount of \$4, [REDACTED] is to be deposited into the Debt Service Reserve Fund. The Trustee is to use amounts in the Debt Service Reserve Fund to pay the principal of and interest on the Bonds only after written notice of default on the Mortgage Loan has been given to HUD.

In connection with any proposed partial redemption of Bonds, the Trustee is to compute the reduction in the Debt Service Reserve Fund Requirement that will result from such redemption and transfer any amount on deposit in the Debt Service Reserve Fund which will exceed the Debt Service Reserve Fund Requirement following such redemption to the Redemption Fund to be used in connection with such redemption; provided, however, that if the Mortgage Loan is in default, such redemption is not to occur until full FHA Mortgage insurance proceeds have been received.

The Trustee is to deposit all investment earnings received from the investment of amounts in the Debt Service Reserve Fund in the Bond Fund.

The money in the Debt Service Reserve Fund is also to be used to pay the final principal payment due on the Bonds.

## Redemption Fund

Amounts deposit into the Redemption Fund are to be withdrawn to redeem Bonds in accordance with the Indenture. See "THE BONDS — Redemption" herein.

Whenever amounts held in the Bond Fund, the Debt Service Revenue Fund, the Expense Fund and the Redemption Fund are sufficient to redeem all outstanding Bonds on the next date for which notice of redemption may be given and to pay all Qualified Expenses, all such amounts, net of Qualified Expenses, are to be transferred to the Redemption Fund.

## Rebate Fund

The Rebate Fund is to be administered by the Trustee in accordance with the provisions of the Indenture. There are to be deposited in the Rebate Fund such amounts as are required to be deposited therein in accordance with the Indenture. Money deposited in the Rebate Fund is to be held by the Trustee in trust for payment to the federal government of the United States of America, and neither the Issuer nor the Developer nor the holder of any Bonds have any rights in or claim to such money.

The Trustee is to remit amounts in the Rebate Fund to the United States, as directed in accordance with the Indenture.

## Investment of Funds

Money held in the Bond Fund, the Redemption Fund, and the Expense Fund and up to \$           of the amount held in the Debt Service Reserve Fund is to be invested by the Trustee pursuant to an Investment Agreement (the "Investment Agreement") with [                                ], providing for rates of return of       % per annum on amounts in the Debt Service Reserve Fund (up to \$          ) so invested and       % per annum on the Bond Fund, the Redemption Fund, and

the Expense Fund. Failure to receive such rates of return or a return of principal so invested could affect the ability to pay the principal of and interest on the Bonds.

Money held in the funds established under the Indenture is to be invested in the Investment Agreement (as described and defined above) to the maximum extent permitted or, as directed by the Developer, in Investment Securities (as defined below) paying interest and maturing (or having a right to tender on seven days' notice) not later than the dates on which it is estimated that such money will be required by the Trustee. Any money in the funds established under the Indenture which is not the subject of the Investment Agreement is to be invested in Investment Securities maturing (or having a right to tender on seven days' notice) on a date which is the earlier of 90 days from the date such investment is made and the date such funds are needed.

All interest and other profit derived from such investments (other than with respect to money on deposit in the Rebate Fund, in which case earnings and profits are to be retained within the Rebate Fund) are to be deposited when received in the Bond Fund.

Money held in the Debt Service Reserve Fund in excess of \$~~1,000,000~~ is to be invested in Investment Securities as described in clause (7) below.

"Investment Securities" means any of the following that at the time are lawful investments under the laws of the State for the money held under the Indenture: (1) direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof when such obligations are backed by the full faith and credit of the United States, which obligations include the following: (i) United States Treasury obligations which are direct or fully guaranteed obligations; (ii) obligations, debentures, notes or other evidences of indebtedness issued or guaranteed by the Government National Mortgage Association; (iii) Federal Housing Administration debentures; (iv) Federal Home Loan Mortgage Corporation participation certificates and senior debt obligations fully guaranteed as to timely payment of principal and interest; (v) Federal National Mortgage Association's mortgage-backed securities and senior debt obligations (excluded are stripped principal-only mortgage securities which are valued greater than par on the portion of unpaid principal and stripped interest-only mortgage securities); (vi) non-callable obligations of the Resolution Funding Corporation representing an undivided interest in payments of interest from Resolution Funding Corporation obligations; (2) certificates of deposit, time deposits, bankers acceptances (having maturities of not more than 365 days) and repurchase agreements collateralized by obligations described in clause (1) hereof of any bank the unsecured debt obligations of which (or, in the case of the principal bank in a bank holding company, senior unsecured debt obligations of the bank holding company) have been rated by Moody's Investor Services, Inc. ("Moody's") at least "AA3/P-1"; (3) deposits which are fully insured by the Federal Deposit Insurance Corporation or its successor; (4) investment agreements, having similar rates and terms as the Investment Agreement and acceptable to the agency rating the Bonds, with institutions whose unsecured debt or claims paying ability, as the case may be, is and continues to be at all times rated by Moody's or, if Moody's no longer maintains a rating on the Bonds, any other nationally recognized bond rating agency then maintaining a rating on the Bonds at least equal to the rating on the Bonds; (5) units of a taxable money market portfolio rated in the highest category by Moody's; (6) the Investment Agreement; and (7) obligations the interest on which is excluded from gross income pursuant to Section 103 of the Code (including investment in regulated investment companies that invest exclusively in such obligations), provided that such obligations are not specified private activity bonds within the meaning of Section 57(a)(5)(C) of the code and have a Moody's rating of at least "Aa" or P-."

#### **Final Balances**

Upon final payment of all principal of, premium, if any, and interest on the Bonds, and upon satisfaction of all claims against the Issuer and the Trustee under the Indenture, including the payment of all fees, charges and expenses of the Trustee, the Issuer and the Rebate Consultant that are properly due and payable under the Indenture, and any other fees and charges that are properly payable under the Indenture or upon the making of adequate provision for the payment of such amounts, as permitted by



the Indenture, all money remaining in all funds (other than the Rebate Fund) is to be paid to Bank One, Akron, NA, or the Developer.

#### **Events of Default; Acceleration and Other Remedies**

Each of the following is an "event of default" under the Indenture:

- (a) default in the due and punctual payment of any interest on any Bond;
- (b) default in the due and punctual payment of the principal of or premium, if any, on any Bond whether at the stated maturity thereof, or on proceedings for redemption thereof, or on the maturity thereof by declaration;
- (c) if the Issuer files a petition under Chapter IX of the Bankruptcy Code.
- (d) default, and the continuation thereof for a period of 30 days following notice to the Trustee, in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer in the Indenture or in the Bonds after written notice to the Issuer from the Trustee or the registered owners of at least 25% of the Bond Obligation (as defined below) at such time specifying such default and requiring the same to be remedied; or

Upon the occurrence of an event of default as provided in paragraphs (a) and (b) above, the Trustee may, and upon the written request of the holders of not less than 25% of the aggregate principal amount of the Bonds then outstanding must, by notice in writing delivered to the Issuer, declare the principal of all Bonds then Outstanding (the "Bond Obligation") and the interest accrued thereon immediately due and payable, and such principal and interest will thereupon become and be immediately due and payable. There may be no acceleration of Bonds upon an event of default described in paragraph (c) or (d) above.

If at any time after the Bonds have been so declared due and payable, and before any judgment or decree for the payment of the money due has been obtained or entered, the Issuer or the Developer pays to or deposits with the Trustee a sum sufficient to pay all principal of the Bonds then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) upon all the Bonds then due, with interest at the rate borne by the Bonds on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable expenses of the Trustee have been made good or cured or adequate provisions will have been made therefor, and all other defaults under the Indenture have been made good or cured or waived in writing by owners of 100% of the Bond Obligation, then and in every case, the Trustee on behalf of the holders of all the Bonds is to rescind and annul such declaration and its consequences.

Upon the happening and continuance of an event of default, the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the holders of all Bonds, may also proceed to protect and enforce any rights of the Trustee and, to the full extent that the holders of such Bonds themselves might do, the rights of such Bondholders under the laws of the State of Indiana or under the Indenture by such of the following remedies as the Trustee deems most effectual to protect and enforce such rights:

- (1) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, premium, if any, or interest on the Bonds then outstanding, or for the specific performance of any covenant or agreement contained in the Indenture or in the Loan Agreement, the Mortgage Note or the Mortgage, or to require the Issuer to carry out any other covenant or agreement with Bondholders and to perform its duties under the Act;
- (2) by pursuing any available remedies under the Loan Agreement, the Mortgage Note or the Mortgage;

(3) in connection with an event of default described in paragraphs (a) or (b) above, by realizing or causing to be realized through sale or otherwise upon the security pledged under the Indenture; and

(4) by action or suit in equity, to enjoin any acts or things that may be unlawful or in violation of the rights of the holders of Bonds.

If any event of default has occurred and if requested in writing to do so by the holders of not less than 25% of the Bond Obligation with respect to which there is a default, and if indemnified as provided in the Indenture, the Trustee is obliged to exercise one or more of the rights and powers conferred by the Indenture as the Trustee, being advised by counsel, deems most expedient in the interest of the Bondholders. Subject to the provisions of the Indenture, the holders of a majority of the Bond Obligation have the right at any time, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Indenture, or for the appointment of a receiver or any other proceedings under the Indenture, in accordance with the provisions of law and of the Indenture.

### **Remedies of Bondholders**

No holder of any Bond has any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Indenture or for the execution of any trust under the Indenture or for the appointment of a receiver or any other remedy under the Indenture, unless (a) a default occurred of which the Trustee has been notified as provided in the Indenture; (b) such default has become an event of default; (c) the holders of at least 25% of the Bond Obligation have made written request to the Trustee and have offered reasonable opportunity to the Trustee either to proceed to exercise the powers granted in the Indenture or to institute such action, suit or proceeding in its own name; (d) such holders have offered to the Trustee indemnity as provided in the Indenture; and (e) the Trustee within 60 days thereafter fails or refuses to exercise the powers granted in the Indenture, or to institute such action, suit or proceeding; no holders of the Bonds, however, will have any right to affect, disturb or prejudice the lien of the Indenture or the rights of any other holders of Bonds or to obtain priority or preference over any other holders or to enforce any right under the Indenture, except in the manner provided in the Indenture and for the equal and ratable benefit of all owners of Bonds with respect to which there is a default. Nothing contained in the Indenture, however, affects or impairs the right of any Bondholder to enforce the payment of the principal of, the premium, if any, and interest on any Bond at the maturity thereof or the obligation of the Issuer to pay the principal of, premium, if any, and interest on the Bonds issued under the Indenture to the holders thereof, at the time, in the place, from the sources and in the manner set forth in the Bonds.

### **Defeasance**

When the principal of, premium, if any, and interest on, all Bonds have been paid, or provision has been made for payment of the same, together with all other sums payable under the Indenture by the Issuer, the right, title and interest of the Trustee thereupon is to cease and the Trustee, on demand of the Issuer, is to release the lien of the Indenture, cancel the Mortgage Note, endorse the Mortgage for cancellation, and execute such documents to evidence such release as may be reasonably required by the Issuer and the Developer and is to turn over to the Developer (or any such person, body or authority as may be entitled to receive the same) all balances remaining in any funds under the Indenture; provided, however, that in the event of a default under the Mortgage and payment of a claim under the mortgage insurance in FHA Debentures, if any principal remains outstanding on such FHA Debentures when the principal of, and interest on all Bonds has been paid, or provision therefor has been made, as provided below, the Trustee is to return such FHA Debentures to FHA for cancellation, unless the Issuer and the Trustee have received an opinion of nationally recognized bond counsel satisfactory to both that retention of such FHA Debentures will not adversely affect the exemption of interest on the Series 199-3A Bonds from federal income tax.



Proper provision for the payment of the principal of and interest on the Bonds may be made by delivery to the Trustee of (a) cash, (b) non-callable direct obligations of the United States of America, or non-callable obligations fully guaranteed as to principal and interest by the United States of America, maturing on or before the dates when payments in respect of the Bonds become due, and the principal amount of which and the interest thereon which when due will be in an aggregate amount sufficient without reinvestment to make all payments on the Bonds when due, (c) non-callable obligations of the Resolution Funding Corporation representing an undivided interest in payments of interest from Resolution Funding Corporation obligations, or (d) any combination of cash and such obligations. The lien of the Indenture is not to be discharged until the Trustee has received an opinion of bankruptcy counsel, acceptable to the Trustee, to the effect that payment of such money to the Bondholders will not constitute a voidable preference under Section 547 or be recoverable under Sections 362 or 550(a) of the United States Bankruptcy Code in the event of the bankruptcy of the Developer.

Upon an even of default under the Collateral Deposit Agreement between Bank One, Akron, NA (the "Bank"), and the Developer, the Depositor may, at its option, instruct the Issuer to instruct the Trustee to (i) purchase the entire principal amount of the outstanding Series 199-3 A Bonds from the Bank, and (ii) establish a defeasance escrow with the Trustee with amounts provided by the Bank, in an amount sufficient to defease the Series 199-3B Bonds to the earliest date on which such Series 199-3B Bonds are subject to optional redemption, and to call the Series 199-3B Bonds for redemption on such date.

### **FHA Mortgage Insurance**

The Trustee is to take all steps necessary to maintain the FHA Insurance with respect to the Mortgage Loan. In the event of a failure by the Developer to make the entire amount of any payment due under the Mortgage Note or to perform any other covenant under the provisions of the Mortgage, the Trustee is immediately to take all steps necessary not to impair the interests of the Bondholders and to obtain the FHA mortgage insurance benefits.

### **Trustee as FHA-approved Mortgagee; Servicing the Loan; Servicing Agreement**

The Trustee is to be approved by FHA to act as mortgagee for any FHA-insured indebtedness at all times during which the Loan is outstanding.

The Trustee is to engage an FHA-approved mortgage banking company or financial institution not affiliated with the Trustee to service the Loan, as described below. So long as any Bonds remain outstanding, the Mortgage is to be serviced in accordance with acceptable practices of prudent lending institutions and all applicable provisions of the National Housing Act and all applicable rules and regulations thereunder.

The Trustee is directed in the Indenture to accept an assignment from the Prior Trustee of the Servicing Agreement in effect prior to the issuance of the Bonds or to execute another Servicing Agreement in form and substance acceptable to the Issuer. In the event any such Servicing Agreement is terminated, the Trustee is to engage, at the direction of the Issuer, a qualified successor Mortgage Banker to service the Loan in accordance with the provisions of the Indenture; provided, however, that the Trustee may service the Loan itself while such a successor servicer is being selected.

### **Supplemental Indentures Not Requiring Consent of Bondholders**

The Issuer and the Trustee may, without the consent of or notice to any of the Bondholders, enter into indentures supplemental to the Indenture not inconsistent with the terms and provisions of the Indenture or materially adverse to the interests of the holders of the Bonds for any of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in the Indenture;

- (b) to subject to the lien and pledge of the Indenture additional revenues, properties or collateral;
- (c) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or any of them;
- (d) to modify, amend or supplement the Indenture or any indenture supplemental thereto in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute or under any state securities laws;
- (e) to permit the Trustee to comply with any obligations imposed upon it by law;
- (f) to achieve compliance of the Indenture with any applicable federal securities or tax laws;
- (g) to maintain the exclusion of interest on the Series 199~~▲~~3A Bonds from gross income for federal income tax purposes;
- (h) to improve or maintain the rating on the Bonds; and
- (i) in connection with any other change in the Indenture that, in the judgment of the Trustee, is not to the prejudice of the Trustee or the Bondholders.

#### **Supplemental Indentures Requiring Consent of Bondholders**

The Issuer and the Trustee may, with the consent of the holders of not less than two-thirds of the Bond Obligation, enter into supplemental indentures for the purpose of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in the Indenture; except that the provisions described in this paragraph do not permit, without the consent of the owners of all the Bonds that would be affected thereby (a) an extension of the stated maturity or a reduction in the principal amount or reduction in the rate, or extension of time of payment of interest on, or reduction of any premium payable on the redemption of, any Bonds, without the consent of the holders of all Bonds; (b) the creation of any lien prior to or on a parity with the lien of the Indenture; (c) a reduction in the amount of the Bond Obligation the consent of which is required for the execution of such supplemental indentures, without the consent of the holders of all Bonds at the time outstanding that would be affected by the action to be taken; (d) the modification of the rights, duties or immunities of the Trustee without the consent of the Trustee; (e) a privilege or priority of any Bond over any other Bonds; (f) any action that, in the opinion of nationally-recognized bond counsel, may result in the loss of the exclusion of interest on the Series 199~~▲~~3A Bonds from gross income for federal income tax purposes; or (g) any change in the provisions of the Indenture limiting a disposition of the Mortgage Loan.

#### **Amendment of Certain Documents**

The Issuer and the Trustee may make or consent to any amendment, change or modification of the Loan Documents without approval by HUD. The Trustee is not obligated to enter into any amendment under the Indenture unless it has received an opinion of counsel to the effect that the amendment has been effected in compliance with the provisions of the Indenture.

#### **The Trustee**

During any event of default, the Trustee is to exercise rights and powers vested in it by the Indenture with the degree of care and skill a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs. Otherwise, the Trustee is to perform only such duties as are specifically set forth in the Indenture.

In the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely upon any certificate or opinion furnished it. The Trustee is not liable in the absence of bad faith for any error of judgment, or for any act or omission taken in accordance with the direction of the holders of any applicable proportion of the Bonds.

#### **HUD and FHA Requirements to Control**

In the event of any conflict between the provisions of the Indenture and the provisions of the National Housing Act, any applicable HUD regulations, related HUD administrative requirements, the Mortgage Loan Documents, such National Housing Act, regulations, related administrative requirements or Mortgage Loan Documents will be controlling in all respects.

#### **THE FHA REGULATORY AGREEMENT**

*The following is a brief summary of the FHA Regulatory Agreement. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the FHA Regulatory Agreement, copies of which are on file with the Issuer and the Trustee.*

The Developer and HUD have entered into an FHA Form of Regulatory Agreement (the "FHA Regulatory Agreement") with respect to the Project. The FHA Regulatory Agreement provides, among other things, that the Developer is required to maintain the Project in good condition. Dwelling units are not to be rented for a period of less than 30 days.

The FHA Regulatory Agreement also prohibits the conveyance, transfer or encumbrance of the Project or any right to manage the Project without the prior written approval of FHA. The Developer may not make, receive, or retain any distribution of assets or income from the Project except from "surplus cash" and only as permitted under applicable laws.

The Developer is prohibited, without the prior written approval of FHA, from remodeling, adding to or demolishing any part of the Project or engaging in any other business or activity or incurring any obligation or liability not in connection with the Project.

The Project and all books, records, and documents relating thereto are required to be subject to examination and inspection at any reasonable time by FHA. Books and accounts of the Project are to be kept in accordance with FHA requirements and complete annual financial reports are to be furnished to FHA within 60 days of the end of each fiscal year.

In the event of a default in the performance of the Developer's obligations under the FHA Regulatory Agreement, even in the absence of a default under the Note or the Mortgage, FHA may (a) notify the Mortgagee of such default and request the Mortgagee to declare a default under the Note and the Mortgage and the Mortgagee may, at its option, declare the whole indebtedness due and proceed with assignment of the Note and the Mortgage to FHA, (b) collect all rents and charges in connection with the operation of the Project and use such collections to pay the Developer's obligations under the FHA Regulatory Agreement and under the Note and the Mortgage and the expenses of maintaining the Project, (c) take possession of and operate the Project, and (d) apply for an injunction, appointment of a receiver or such other relief as may be appropriate.

#### **TAX MATTERS**

**Series 199-3A Bonds.** In the opinion of Kutak Rock, Washington, D.C., Bond Counsel, assuming compliance on a continuous basis by all parties with certain requirements of the 1986 Code and of the 1954 Code and the regulations thereunder, interest on the Series 199-3A Bonds is excludible from



gross income for federal income tax purposes under existing laws, regulations, rulings and judicial decisions, except to the extent of the following:

(1) The interest on any Series 199-3A Bond for any period during which such Series 199-3A Bond is held by a "substantial user" of facilities refinanced by the proceeds of the Bonds or a "related person" within the meaning of Section 147 of the 1986 Code.

(2) Because the 19-83 Bonds were issued prior to August 8, 1986, interest on the Bonds will not be treated as an item of tax preference in computing the alternative minimum tax for individuals and corporations; however, interest on the Series 199-3A Bonds is included in the "adjusted current earnings" (i.e., alternative minimum, taxable income as adjusted for certain items including those items that would be included in the calculation of a corporation's earnings and profits under Subchapter C of the 1986 Code) of certain corporations for taxable years beginning after 1989, and such corporations are required to include in the calculation of alternative minimum taxable income 75% of the excess of such corporation's adjusted current earnings over its alternative minimum taxable income (determined without regard to this adjustment and prior to reduction for certain net operating losses).

In rendering its opinion, Bond Counsel will assume the correctness of the opinion of Bond Counsel for the 19-83 Bonds, with respect to the tax exemption of interest on the 19-83 Bonds and compliance on a continuous basis from the date of delivery thereof, with certain procedures established in the indenture related to the 19-83 Bonds designed to meet the requirements of the 1954 Code as in effect immediately prior to the enactment of the 1986 Code, and the regulations thereunder and with the Issuer's covenants in the Indenture related to the Series 199-3A Bonds to take or refrain from taking such actions as are necessary to keep interest on the Bonds excludible from gross income for federal income tax purposes. In addition, Bond Counsel will assume continued compliance with certain procedures which meet the requirements of Section 103 of the 1986 Code to the extent such provisions apply to the Series 199-3A Bonds, including the covenants in the Loan Agreement to take or refrain from taking such actions as are necessary to keep interest on the Series 199-3A Bonds excludible from the gross income of the Developer thereof for federal income tax purposes.

Although interest on the Series 199-3A Bonds is excluded from gross income for federal income tax purposes, the accrual or receipt of interest on the Series 199-3A Bonds may otherwise affect the federal income tax liability of the recipient. The extent of these other tax consequences will depend upon the recipient's particular tax status or other items of income or deduction. Bond Counsel expresses no opinion regarding any such consequences. Purchasers of the Series 199-3A Bonds, particularly purchasers that are corporations (including S corporations and foreign corporations operating branches in the United States), property or casualty insurance companies, banks, thrifts or other financial institutions and certain recipients of Social Security and railroad retirement benefits, are advised to consult their tax advisors as to the tax consequences of purchasing or holding the Bonds.

In the opinion of Bond Counsel, the interest on the Series 199-3A Bonds is exempt from taxation by the State of Indiana for all purposes, except inheritance taxes, and the franchise tax applicable to corporations transacting business of a financial institution in the State of Indiana.

**Series 199-3B Bonds.** Interest on the Series 199-3B Bonds is subject to federal income taxation.

#### ABSENCE OF LITIGATION

It is a condition of the Placement Agent's acceptance of the Bonds, that on the date of delivery of the Bonds, the Issuer deliver a certificate to the effect that no controversy or litigation of any nature involving the Issuer is pending, nor, to its knowledge, is any such controversy or litigation threatened in writing delivered to the Issuer, that would attempt to restrain or enjoin the issuance, sale, execution

or delivery of the Bonds, or that would in any way contest or affect the validity of the Bonds, the proceedings of the Issuer taken with respect to the issuance or sale thereof, the pledge or application of any money or securities provided for the payment of the Bonds and the existence or powers of the Issuer or the title of any officers of the Issuer to their respective positions.

### LEGAL MATTERS

Certain legal matters incident to the authorization, issuance, sale and delivery of the Bonds by the Issuer are to be passed upon by Kutak Rock, Washington, D.C., Bond Counsel. Certain legal matters relating to the Issuer are to be passed upon by ~~Star~~ and for the Placement Agent by its counsel, Arter Hadden Haynes & Miller, Washington, D.C. Charles Loeser, Esq., South Bend, Indiana, will serve as counsel to the Developer in connection with the transaction. Payment of the fees and expenses of the foregoing counsel is contingent upon the issuance and delivery of the Bonds.

### ENFORCEABILITY OF REMEDIES

The remedies available to the Trustee and the owners of the Bonds upon an event of default under the Indenture, the Mortgage Note or any other document described herein are in many respects dependent upon regulatory and judicial actions which are often subject to discretion and delay. Under existing law and judicial decisions, the remedies provided for under such documents may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Bonds will be qualified to the extent that the enforceability of certain legal rights related to the Bonds is subject to limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally and by equitable remedies and proceedings generally.

### MARKETING

Bank One, Columbus, N.A. (the "Placement Agent"), is offering the Bonds on behalf of the Issuer at the prices set forth on the cover hereof. The initial offering prices may be changed from time to time and concessions from the offering prices may be allowed to dealers, banks and others. For its services as such, the Placement Agent is to be paid a fee equal to ~~\$~~. From this fee, the Placement Agent will pay certain of its expenses relating to the offering.

### RATING

It is a condition precedent to the Placement Agent's acceptance of the Bonds that Moody's assign the Bonds a rating as set forth on the cover page hereof. Moody's may have obtained and considered information and material that have not been included in this Private Placement Memorandum. Generally, Moody's bases its ratings on information and material so furnished and on investigations, studies and assumptions made by it. The rating is not a recommendation to buy, sell or hold the Bonds. The rating reflects only the views of Moody's and an explanation of the significance of such rating may be obtained from Moody's.

No assurance can be given that the rating will be maintained for any given period of time or that the rating may not be revised downward or withdrawn entirely by Moody's, if in its judgment, circumstances warrant. Any such downward change in or withdrawal of the rating may have an adverse effect on the market price of the Bonds. The Placement Agent and the Issuer have undertaken no responsibility after the offering of the Bonds to assure the maintenance of the rating or to oppose any such revision or withdrawal.

## OTHER MATTERS

The foregoing summaries and explanations do not purport to be comprehensive, and are expressly made subject to the exact provisions of documents referred to herein. Copies of the Indenture and the other documents referred to herein may be obtained from the Trustee or the Placement Agent. Any statements in this Private Placement Memorandum involving matters of opinion or forecast, whether or not expressly so stated, are intended as such and not as representations of fact. This Private Placement Memorandum is not to be construed as a contract or agreement between the Issuer or the Placement Agent and the purchasers or holders of any Bonds.

The execution and delivery of this Private Placement Memorandum have been duly authorized by the Issuer.

★City of ★Fort Wayne, Indiana

By: ★  
★Mayor



**APPENDIX A**

**FORM OF OPINION OF TAX COUNSEL**

★CITY OF ★FORT WAYNE, INDIANA  
\$3,★720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3A

and

★CITY OF ★FORT WAYNE, INDIANA  
\$345,000  
HEALTH CARE FACILITIES TAXABLE REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3B

BOND PLACEMENT AGREEMENT

★City of ★Fort Wayne, Indiana  
★Fort Wayne, Indiana

Health Quest Realty ★X,  
an Indiana ★General Partnership  
South Bend, Indiana

★August \_\_, 199★3

Dear Ladies and Gentlemen:

Bank One, Columbus, N.A. (the "Placement Agent"), on behalf of itself and not as your agent or fiduciary, understands that the ★City of ★Fort Wayne, Indiana (the "Issuer"), proposes to issue and sell \$3,★720,000 aggregate principal amount of its Health Care Facilities Revenue Refunding Bonds, ★Health Quest Realty X Issue (FHA Insured Mortgage), Series 199★3A (the "Series 199★3A Bonds"), and \$345,000 aggregate principal amount of its Health Care Facilities Taxable Revenue Refunding Bonds, ★Health Quest Realty X Issue (FHA Insured Mortgage), Series 199★3B (the "Series 199★3B Bonds" and, collectively with the 199★3A Bonds, the "Bonds"). The Bonds are to be issued pursuant to Title 36, Article 7, Chapters 11.9 and 12, and Title 5, Article I, Chapter 5 of the Indiana Code, as amended (collectively, the "Act"), and a Trust Indenture dated as of ★August 1, 199★3 (the "Indenture"), between the Issuer and Society National Bank, Indiana, as trustee (the "Trustee"), as set forth in the Private Placement Memorandum of the Issuer prepared for use by the Placement Agent in making an offering of the Bonds (the "Private Placement Memorandum"). The Bonds will mature on the dates and will bear interest at the rates set forth in Schedule I hereto.

The Bonds are being issued by the Issuer (i) to provide a portion of the money to refund the Issuer's Health Care Facilities Revenue Bonds, ★Health Quest Realty X Issue (FHA Insured Project), Series A (the "198★3 Bonds"), issued by the Issuer in part for the purpose of financing

a mortgage loan (the "Mortgage Loan"), made to Health Quest Realty ~~▲X~~, an Indiana ~~▲General~~ Partnership (the "Developer"), and (ii) to pay certain costs of issuing the Bonds and other costs of the refunding. The Mortgage Loan is evidenced by a mortgage note (the "Mortgage Note") secured by a first lien mortgage (the "Mortgage") on the Project (as defined in the Indenture). The Mortgage Note has been finally endorsed for insurance by the Federal Housing Administration ("FHA"), an organizational unit within the United States Department of Housing and Urban Development ("HUD"), pursuant to the provisions of Section 232 of the National Housing Act of 1934, as amended (the "National Housing Act").

Section 1. Purchase, Sale and Delivery of Bonds. On the basis of the representations and agreements contained herein, but subject to the terms and conditions herein set forth, the Placement Agent agrees to sell for the Issuer, and the Issuer agrees to sell to the purchasers found by the Placement Agent, all, but not less than all, of the Bonds at a purchase price equal to 100% of the aggregate principal amount thereof, plus accrued interest to the Closing Date specified below. The Issuer shall deliver the Bonds to the order of the Placement Agent in definitive form against payment of the purchase price therefor by immediately available funds at 10 a.m., Eastern time, on ~~▲August~~, 199~~▲3~~, or at such other time thereafter as may be mutually agreed upon by the parties, such time being hereinafter referred to as the "Closing Date." Bonds in definitive form (with CUSIP numbers printed thereon) shall be delivered to the Placement Agent for inspection and packaging at least two business days prior to the Closing Date. ~~▲~~

The terms and conditions of the Bonds shall be as set forth in the Indenture and described in the Private Placement Memorandum.

For its services hereunder, the Placement Agent shall receive a fee equal to \$~~▲~~ which shall be payable on the Closing Date and from which it shall pay certain expenses set forth in Schedule II hereto.

Section 2. Financing Documents. On or prior to the Closing Date, the Placement Agent shall have received copies of the following:

- (a) The Indenture, duly executed by the Issuer and the Trustee;
- (b) The Private Placement Memorandum, duly executed by the Issuer, certified by an authorized officer of the Issuer as a "final Private Placement Memorandum" within the meaning of Rule 15c2-2(e)(3) of the Securities Exchange Act of 1934, as amended;
- (c) The Escrow Agreement (the "Escrow Agreement") between the Issuer and the trustee under the Trust Indenture securing the Prior Bonds (the "Prior Trustee"), duly executed by the Issuer and the Prior Trustee;
- (d) The Ordinance of the Issuer authorizing the issuance and delivery of the Bonds (the "Ordinance");
- (e) The Loan Agreement dated as of ~~▲August~~ 1, 199~~▲3~~, between the Issuer and the Developer (the "Loan Agreement");
- (f) The Mortgage Note and Mortgage duly executed by the Developer and endorsed for insurance by FHA.



(g) The Custody and Tender Option Agreement with respect to the Series 199★3A Bonds (the "Tender Option Agreement"), dated as of ★August 1, 199★3, executed by ★PNC Bank, Ohio, National Association, as Custodian (in such capacity, the "Custodian"), and as tender agent (in such capacity, the "Tender Agent"), Bank One, Akron, NA (the "Depositor"), and Bank One, Columbus, N.A., as remarketing agent (in such capacity, the "Remarketing Agent");

(h) the Collateral Deposit Agreement, dated as of ★August 1, 199★3, executed by the Depositor, the Custodian, and the Developer (the "Collateral Agreement"); and

(i) The Investment Agreement, dated as of ★August \_\_, 199★3 (the "Investment Agreement"), executed by the Trustee and ★\_\_\_\_ (the "Investment Agreement Provider").

Section 3. Offering and Authorization. The Placement Agent proposes to offer and sell the Bonds as set forth in the Private Placement Memorandum. The Issuer acknowledges that it has been advised that the Placement Agent may offer the Bonds at prices above or below the prices set forth in the Private Placement Memorandum.

The Issuer acknowledges that the Indenture and the Private Placement Memorandum, including any supplements or amendments thereto, have been and will be used by the Placement Agent in connection with the offer and sale of the Bonds. The Issuer hereby ratifies the use by the Placement Agent of the Preliminary Private Placement Memorandum dated ★August \_\_, 199★3 (the "Preliminary Private Placement Memorandum"), with respect to the Bonds and represents that the Preliminary Private Placement Memorandum is "final" within the meaning of Rule 15c2-12(b) under the Securities Exchange Act of 1934, as amended.

Section 4. Representations. The Issuer makes the following representations to the parties hereto.

(a) The Issuer represents that the information in the Private Placement Memorandum under the captions "THE ISSUER" and "ABSENCE OF LITIGATION," as of the date thereof, does not include any untrue statement of a material fact or fail to state any material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(b) At the time of the execution of this Bond Placement Agreement, the Issuer is, and on the Closing Date the Issuer will be a municipal corporation and a political subdivision of the State of Indiana (the "State"), with full legal right, power and authority to borrow money as necessary to issue the Bonds.

(c) The Issuer has complied with all the provisions of the laws of the State and has full legal right, power and authority to issue the Bonds and to enter into this Bond Placement Agreement, to authorize the execution of the Indenture, to authorize the preparation of the Private Placement Memorandum relating to the Bonds and to authorize their distribution by the Placement Agent, to sell and deliver the Bonds to the Placement Agent as provided herein and to carry out and consummate all other transactions contemplated by each of the aforesaid documents.

(d) The Ordinance, duly authorized the execution of the Indenture, approved the execution and delivery of this Bond Placement Agreement, the Escrow Agreement, the Private Placement Memorandum and the Bonds, and authorized the taking of any and all such action as may be required on the part of the Issuer to carry out, give effect to and consummate the transactions contemplated thereby.

(e) The execution and delivery of the Private Placement Memorandum, this Bond Placement Agreement, the Escrow Agreement, the Indenture and the Bonds and other agreements contemplated hereby and thereby, is in compliance with the provisions hereof and thereof, and the issuance of the Bonds and use of the proceeds thereof as so contemplated will not conflict with or constitute a breach of or a default under any law, administrative regulation, court decree, resolution or agreement to which the Issuer is subject.

Section 5. Representations and Warranties of the Developer. The Developer makes the following representations and warranties to the Issuer and the Placement Agent as of the date hereof:

(a) The Developer is a duly organized and existing limited partnership under the laws of the State and has full legal right, power and authority (i) to enter into this Bond Placement Agreement, and (ii) to fulfill its obligations under the Mortgage Note, as amended as of the date hereof.

(b) The information in the Private Placement Memorandum under the captions "THE DEVELOPER" and "THE PROJECT," does not on the date hereof contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements relating to the Developer and the Project contained therein, in light of the circumstances under which they were made, not misleading.

(c) Except as disclosed in the Private Placement Memorandum, to the best knowledge of the Developer after due inquiry, as of the Closing Date, the Developer will not be in breach of or default under any applicable law or administrative regulation of the State, or of the United States that would impair materially the performance of its obligations under this Bond Placement Agreement, the Mortgage Note, the Mortgage, the Loan Agreement, or any applicable judgment or decree to which the Developer is a party or otherwise subject; and the execution and delivery of this Bond Placement Agreement and compliance with the provisions thereof will not to the best knowledge of the Developer after due inquiry, materially conflict with or constitute a material breach of or default from any law, administrative regulation, judgment, decree, loan agreement or note to which the Developer is a party or otherwise subject.

(d) To the best knowledge of the Developer after due inquiry, all approvals, consent and orders of any governmental authority, board or commission having jurisdiction over the Developer or the Project that would constitute a condition precedent to the performance of the Developer of its obligations hereunder and under the Loan Agreement, the Mortgage Note or the Mortgage have been obtained.

(e) The Developer has received no notice of any pending or threatened action, suit, proceeding, inquiry or investigation, at law or in equity, before any court, other board or body affecting the existence of the Developer or seeking to prohibit, restrain or enjoin the financing or the sale, issuance or delivery of the Bonds, the refunding of the Prior Bonds or in any way contesting or affecting the validity or enforceability of this Bond Placement Agreement, the Mortgage Note, or the Mortgage or contesting the execution and delivery of this Bond Placement Agreement wherein an unfavorable decision relating or finding would materially adversely affect the validity or enforceability of any such documents.

(f) (i) The Mortgage Loan is not delinquent under the terms thereof to the extent of more than one monthly payment of principal, interest or escrow default and is not otherwise in default; (ii) the Mortgage Loan is not subject to any defense that would prevent recovery in full or in part, of any benefits under the FHA mortgage insurance contract with respect to the Mortgage Loan or that would result in any deduction or surcharge from such mortgage insurance

benefits or the requirements of any indemnity; and (iii) outstanding advances to the Mortgagor under the Mortgage Loan other than the outstanding principal amount of the Mortgage Loan.

**Section 6. Termination.** The Placement Agent may terminate its obligations hereunder by written notice to the Issuer and the Developer if at or prior to the Closing Date:

(a) (i) Legislation shall have been enacted by the Congress, or recommended to the Congress for passage by the President of the United States or the U.S. Department of the Treasury or the Internal Revenue Service or any member of the United States Congress or favorably reported for passage to either House of the Congress by any Committee of such House to which such legislation has been referred for consideration, or (ii) a decision shall have been rendered by a court established under Article III of the Constitution of the United States, or the United States Tax Court, or (iii) an order, ruling, regulation or communication (including a press release) shall have been issued by the Treasury Department of the United States or the Internal Revenue Service, in each case referred to in clauses (i), (ii) and (iii), with the purpose or effect, directly or indirectly, of including in gross income for federal income tax purposes interest to be received by any owners of the Series 199~~4~~<sup>3</sup>A Bonds;

(b) Legislation shall have been enacted, or action taken by the Securities and Exchange Commission, that, in the opinion of counsel to the Placement Agent, has the effect of requiring the contemplated offering of the Bonds to be registered under the Securities Act of 1933, as amended, or the Indenture to be qualified under the Trust Indenture Act of 1939, as amended; or

(c) There shall have occurred after the date hereof a general suspension of trading in securities, or the declaration of a general banking moratorium by the United States of America, State of Ohio or State authorities, or any war involving the United States or other national calamity, the effect of which, in the Placement Agent's reasonable judgment, will adversely affect the marketability of the Bonds.

**Section 7. Conditions to Placement Agent's Obligation.** The Placement Agent's obligation hereunder to place the Bonds for the Issuer shall be subject to the accuracy of the representations of the Issuer herein, to the accuracy of statements to be made on behalf of the Issuer, to the performance by the Issuer of its obligations hereunder, and to the following additional conditions:

(a) All official or corporate action of the Issuer relating to the Indenture, the Escrow Agreement, the Ordinance, the Loan Agreement, this Bond Placement Agreement and the Bonds shall be in full force and effect and shall not have been amended, modified or supplemented, except as may have been agreed to by the Placement Agent.

(b) The Placement Agent shall have received an unqualified approving legal opinion of Kutak Rock, Washington, D.C., Bond Counsel, dated the Closing Date with respect to the Bonds, together with a supplemental opinion in substantially the form attached hereto as Exhibit A.

(c) The Placement Agent shall have received an opinion of counsel for the Issuer, in substantially the form attached as Exhibit B.

(d) The Placement Agent shall have received an opinion of counsel to the Developer, in substantially the form attached as Exhibit C.

(e) The Placement Agent shall have received an opinion of its counsel, Arter Hadden Haynes & Miller, Washington, D.C., dated the Closing Date, as to such matters and in such form as the Placement Agent may reasonably request. In rendering such



opinion, such counsel may assume the correctness of the matters contained in the opinions of Bond Counsel and Issuer's counsel and may rely on the other certificates and opinions delivered hereunder with respect to the matters covered therein.

(f) The Placement Agent shall have received a certificate, dated the Closing Date and signed by an authorized officer of the Trustee, to the effect that (i) he or she is an authorized officer of the Trustee; (ii) the Indenture has been duly executed and delivered by the Trustee; (iii) the Trustee has all necessary corporate and trust powers required to carry out the trust created by the Indenture; and (iv) to the best of his or her knowledge, the acceptance by the Trustee of the duties and obligations of the Trustee under the Indenture and compliance with the provisions thereof will not conflict with or constitute a breach of or default under any law, administrative regulation, consent decree or any agreement or other instrument to which the Trustee is subject.

(g) The Placement Agent shall have received a certificate, signed by an authorized officer of the Trustee, solely in its capacity as Mortgagee under the Mortgage Note, to the effect that (i) the Mortgage Loan is not delinquent under the terms thereof to the extent of more than one monthly payment of principal, interest or escrow default and is not otherwise in default; (ii) the Mortgage Loan is not subject to any defense that would prevent recovery in full or in part, of any benefits under the FHA mortgage insurance contract with respect to the Mortgage Loan or that would result in any deduction or surcharge from such mortgage insurance benefits or the requirements of any indemnity; and (iii) the Mortgage Loan is not subject to any outstanding advances to the Mortgagor under the Mortgage Loan other than the outstanding principal amount of the Mortgage Loan.

(h) The Placement Agent shall have received an opinion of counsel to the Trustee in substantially the form attached as Exhibit D hereto.

(i) The Placement Agent shall have received a certificate, dated the Closing Date and signed on behalf of the Issuer, to the effect that:

(i) except as disclosed in the Private Placement Memorandum under the caption "ABSENCE OF LITIGATION," no litigation or other proceedings involving the Issuer are pending or, to the knowledge of the person or persons signing the certificate, threatened in any court or other tribunal of competent jurisdiction, state, State or federal, in any way (A) restraining or enjoining the issuance, sale or delivery of the Bonds, (B) questioning or affecting the refunding of the Prior Bonds, the Bonds, the validity of this Bond Placement Agreement, the Indenture, the Loan Agreement, the Escrow Agreement, the pledge to the Bondholders of any money or other security provided under the Indenture, or any other transaction referred to in the Private Placement Memorandum, (C) questioning or affecting the validity of any of the proceedings for the refunding of the Prior Bonds, or the authorization, sale, execution, issuance or delivery of the Bonds, (D) questioning or affecting the organization or existence of the Issuer or the title to any office of the executive officers thereof or (E) questioning or affecting the power and authority of the Issuer to issue the Bonds, or to execute this Bond Placement Agreement, the Indenture, the Escrow Agreement, the Loan Agreement or the Private Placement Memorandum;

(ii) the information in the Private Placement Memorandum under the captions "THE ISSUER" and "ABSENCE OF LITIGATION," does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and

(iii) the Issuer has complied with and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date and the representations of the Issuer contained herein are true, complete and correct as of the Closing Date.

(j) The Placement Agent shall have received arbitrage certifications by the Issuer in form and substance satisfactory to Bond Counsel.

(k) Moody's Investor Services, Inc. shall have issued and not withdrawn a rating of "A" on the Bonds.

(l) The Placement Agent shall have received an opinion of counsel to the Custodian and the Tender Agent, in substantially the form attached as Exhibit E hereto.

(m) The Placement Agent shall have received an opinion of counsel to the Depositor in substantially the form attached as Exhibit F hereto.

(n) The Placement Agent shall have received a certificate of an authorized officer of the Depositor in substantially the form attached as Exhibit G hereto.

(o) The Placement Agent shall have received a certificate of the Trustee with respect to Bond proceeds in substantially the form attached as Exhibit H hereto.

(p) The conditions precedent (other than the issuance of the Bonds) to the issuance of the Certificates (as defined in the Tender Option Agreement) set forth in the Tender Option Agreement shall have been met.

Section 8. Covenants. The Issuer covenants and agrees with the Placement Agent as follows:

(a) If any event occurs prior to the date that is 90 days after the Closing Date as a result of which the Private Placement Memorandum would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein not misleading, the Issuer shall prepare or cause to be prepared with the Placement Agent's approval an amendment or supplement to the Private Placement Memorandum that will correct such statement or omission, provided, however, if such event occurs on or prior to the Closing Date, the Placement Agent in its sole discretion shall have the right to terminate its obligations hereunder by written notice to the Issuer and the Developer. The Issuer's obligations under this paragraph are limited to the information under the captions "THE ISSUER" and "ABSENCE OF LITIGATION," except to the extent that the Issuer receives written notice that the Private Placement Memorandum includes an untrue statement of material fact or omits to state a material fact, which notice specifies the statement or omission.

(b) To the extent required by the Indenture, the Issuer shall take all necessary actions to cause the Bonds to comply with the provisions of the laws and regulations of the State pursuant to which the Bonds are issued and, upon written notice from Bond Counsel, of the 1954 Code (as defined in the Indenture), or the Code (as defined in the Indenture) and shall not knowingly take any action, or permit any action within its control to be taken, in violation of such provisions or that would cause interest on the Series 199-3A Bonds to be included in gross income for federal income tax purposes.

(c) The Issuer covenants to deliver to the Placement Agent a final Private Placement Memorandum (within the meaning of Rule 15c2-12(e) of the Securities Exchange Act of 1934, as amended), duly executed by the President of the Town Council of the Issuer on the date hereof. The Issuer also covenants to provide the Placement Agent with a reasonable number of

additional copies of such final Private Placement Memorandum as the Placement Agent may request, at the expense of the Developer.

**Section 9. Payment of Expenses.** The Placement Agent shall pay its own expenses; the fees and expenses of its counsel; the initial rating agency fees; the cost of printing the Bonds and certificates, the Preliminary Placement Memorandum, the Placement Memorandum; the fees and expenses of bond counsel; Certificate Disclosure Counsel, Initial Certificate Custody, Tender and Paying Agent fees, and the Liquidity Provider closing fee, initial six-month facility fee, expenses, and counsel; and certain additional expenditures, estimates of which are all more particularly set forth in Schedule II hereof. The Issuer shall pay or cause to be paid, but solely from amounts available therefor under the Indenture, a payment to the Placement Agent of \$~~1,000,000~~, the fees and expenses of counsel to the Issuer; the Issuer's Fee; the initial Trustee fees and expenses; and the fees and expenses of counsel to the Trustee, estimates of which are set forth in Schedule II hereof. In addition, the Developer shall pay or cause to be paid any and all other costs and expenses in connection with the issuance of the Bonds and the Certificates, including, but not limited to, the expenses of counsel to the Developer, and any document recording costs.

**Section 10. Indemnification.** The Developer agrees to indemnify and hold harmless the Issuer, Bond Counsel, the Placement Agent, its counsel, the Issuer's financial advisors, any member, officer, official, employee or agent of the Issuer and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the Securities Act of 1933, as amended (collectively referred to herein as the "Indemnified Parties"), against any and all losses, claims, damages, liabilities or expenses whatsoever (i) as a result of any legal action brought by or on behalf of the owners of the 198~~1~~3 Bonds (as defined in the Indenture), provided, however, that the indemnification provided under this subpart (i) to the Issuer, the Issuer's financial advisors, the Issuer's Co-counsel and any member, officer, official, employee or agent of the Issuer or any person who controls the Issuer shall not apply to any loss, claim, damage, liability or expense arising from any willful misconduct by such party; or (ii) caused by any untrue or misleading statement or alleged untrue or alleged misleading statement of a material fact concerning the Developer or the Project contained in the subsections of the Private Placement Memorandum entitled "The Private Participants" or "The Project" or caused by any omission from such subsections of any material fact with respect to the information concerning the Developer or the Project contained in such subsections necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading or, insofar as the Issuer or any member, officer, official, employee or agent of the Issuer is concerned, caused by any untrue or misleading statement or alleged untrue or misleading statement or any omission of any material fact in any portion of the Private Placement Memorandum (other than under the captions "THE ISSUER" or "ABSENCE OF LITIGATION") necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

In case any action shall be brought against one or more of the Indemnified Parties based upon the information described in the preceding paragraph and in respect of which indemnity may be sought against the Developer, the Indemnified Parties shall promptly notify the Developer in writing and the Developer shall promptly assume the defense thereof, including the employment of counsel acceptable to the Indemnified Parties, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties has the right to employ separate counsel in any such action and to participate in the defense thereof. The Developer shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Developer, or if there be a final judgment for the plaintiff in any such action with or without consent, the Developer agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.



Section 11. Survival of Covenants and Representations. The respective agreements, covenants, representations and other statements of the Issuer, the Placement Agent, the Developer and of their respective officers set forth in or made pursuant to this Bond Placement Agreement shall remain in full force and effect, notwithstanding any investigation made by or on behalf of any party hereto, and shall survive the delivery of and payment for the Bonds.

Section 12. Notices. Any notice or other communication to be given to the Issuer under this Bond Placement Agreement may be given by delivering the same in writing to the Issuer at its address set forth above, Attention: ★[REDACTED]. Any notice or other communication to be given to the Placement Agent under this Bond Placement Agreement may be given by delivering the same in writing to Bank One, Columbus, N.A., 100 E. Broad Street, Columbus, Ohio 43271-0152, Attention: ★[REDACTED], with a copy to Banc One Capital Corporation, 1750 Presidents Street, Suite 200, Reston, Virginia 22090, Attn: Bruce R. Coleman, Vice President. Any notice or other communication to be given to the Developer under this Bond Placement Agreement may be given by delivering the same in writing to Health Quest Realty ★X, c/o Health Quest Corporation, 315 West Jefferson, South Bend, Indiana 46601, Attention: Tony Wright.

Section 13. Governing Law. This Bond Placement Agreement shall be governed by the laws of the State.

Section 14. Effectiveness. This Bond Placement Agreement shall become effective upon the execution of the acceptance hereof by the Issuer.

Section 15. Counterparts. This Bond Placement Agreement may be executed in one or more counterparts.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed copy of this Bond Placement Agreement, whereupon it will become a binding agreement among the Placement Agent, the Developer and the Issuer in accordance with its terms.

Very truly yours,

BANK ONE, COLUMBUS, N.A.

By: \_\_\_\_\_  
Assistant Vice President

The foregoing is confirmed and accepted as of the date first above written.

★CITY OF ★FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Title:

HEALTH QUEST REALTY ★X,  
an Indiana ★General Partnership

By: \_\_\_\_\_  
General Partner

SCHEDULE I

MATURITIES, PRINCIPAL AMOUNTS AND INTEREST RATES

<u>Series</u>	<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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## SCHEDULE II

### ESTIMATED COSTS OF ISSUANCE

Payment to Placement Agent	\$★
Issuer's Fee	★
Issuer's Counsel Fees and Expenses	★
Initial Bond Trustee Fees and Set-up and Expenses including Trustee Counsel	★
TOTAL	\$★

### ESTIMATED EXPENSES TO BE PAID BY PLACEMENT AGENT

Bond Counsel Fees and Expenses	\$★
Placement Agent's Counsel Fees and Expenses	★
Rating Agency Fees	★
Preliminary Placement Memorandum and Placement Memorandum, Printing Costs	★
TOTAL	\$★

GRAND TOTAL	\$★
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(Form of Bond Counsel Supplemental Opinion)

[Closing Date]

Bank One, Columbus, N.A.  
Columbus, Ohio

★CITY OF ★FORT WAYNE, INDIANA  
\$3,★720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3A

and

★CITY OF ★FORT WAYNE, INDIANA  
\$345,000  
HEALTH CARE FACILITIES TAXABLE REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3B

Dear Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the authorization and issuance of the captioned bonds (the "Bonds") by ★City of ★Fort Wayne, Indiana (the "Issuer").

We have examined originals, or copies certified or otherwise identified to our satisfaction, of (a) the Trust Indenture (the "Indenture") relative to the Bonds dated as of ★August 1, 199★3, between the Issuer and Society National Bank, Indiana, as Trustee (the "Trustee"); (b) the Mortgage Note and the Assignment from the Developer; (c) the Bond Placement Agreement dated ★August 1, 199★3 (the "Bond Placement Agreement"), between the above-named purchaser and the Issuer; (d) the Private Placement Memorandum (the "Private Placement Memorandum") of the Issuer relating to the Bonds; and (e) the opinions and certificates required to be delivered to the above-named purchaser pursuant to Section 7 of the Bond Placement Agreement. Capitalized terms used herein and not otherwise defined shall have the same meanings as set forth in the Indenture.

On the basis of the foregoing, and our review of such other information, records and documents as in our judgment is necessary or advisable, we are of opinion as follows:

1. The call of the Prior Bonds for redemption as provided in the Prior Indenture from the proceeds of the Bonds is permitted under the terms of the Prior Indenture, and upon the delivery to the Prior Trustee of the investments described in the Escrow Agreement, the lien of the Prior Indenture will be defeased.

2. Under existing laws, the Bonds may be offered and sold without registration under the Securities Act of 1933, as amended, and the Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.

3. The statements made in the Private Placement Memorandum under the headings "INTRODUCTION," "THE BONDS," "THE INDENTURE," "THE LOAN AGREEMENT," "TAX MATTERS," and "LEGAL MATTERS" are, to the extent that such statements are

summaries of documents referred to therein, accurate summaries of the information purported to be shown.

Except as indicated in the preceding paragraph, we have not undertaken to check the accuracy or completeness of, or verified the information contained in, the Private Placement Memorandum. Nevertheless, we have had discussions with representatives of the Issuer and such other persons as we deemed appropriate and our participation in such discussions did not disclose to us any information which gives us reason to believe that the Private Placement Memorandum (except as to any financial or statistical data included in the Private Placement Memorandum as to which we do not express any opinion), as of the date hereof, contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein made, in light of the circumstances under which they were made, not misleading.

In rendering this opinion, we have relied upon the opinions and certificates delivered pursuant to the Bond Placement Agreement.

Reference is made to our opinion of even date herewith delivered in connection with the Bonds and addressed to the Issuer. You may rely on such opinion as if it was addressed to you.

Very truly yours,

(Form of Opinion of Counsel to the Issuer)

[Closing Date]

★City of ★Fort Wayne, Indiana  
★Fort Wayne, Indiana

Bank One, Columbus, N.A.  
Columbus, Ohio

Society National Bank, Indiana,  
as trustee  
South Bend, Indiana

★CITY OF ★FORT WAYNE, INDIANA  
\$3,★720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3A

and

★CITY OF ★FORT WAYNE, INDIANA  
\$345,000  
HEALTH CARE FACILITIES TAXABLE REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3B

Dear Ladies and Gentlemen:

We have served as special counsel to the ★City of ★Fort Wayne, Indiana (the "Issuer"), in the issuance of the above-captioned bonds (collectively, the "Bonds"), issued under and secured by a Trust Indenture dated as of ★August 1, 199★3 (the "Indenture"), between the Issuer and Society National Bank, Indiana, as trustee (the "Trustee"). The Bonds are being sold by Bank One, Columbus, N.A. (the "Placement Agent"), pursuant to a Bond Placement Agreement dated ★August 1, 199★3, between the Issuer and the Placement Agent (the "Bond Placement Agreement"). The Indenture, the Escrow Agreement (as defined below), the Bond Placement Agreement and the other documents executed by the Issuer in connection with the Bonds are hereafter referred to as the "Issuer's Documents."

The Series 1993A Bonds are being issued to refund, pursuant to an Escrow Agreement (the "Escrow Agreement") from the Issuer to the Trustee and the Prior Trustee named therein, certain outstanding bonds (the "Prior Bonds") previously issued in part to provide financing to fund an FHA insured project (the "Project") through a mortgage loan (the "Mortgage Loan"), endorsed for mortgage insurance by HUD, acting through the Federal Housing Administration (the "FHA") pursuant to Section 232 of the National Housing Act of 1934, as amended, and secured by a Mortgage on the Project from the Developer to the Trustee acting for the account of the Issuer (the "Mortgage"). The Series 199★3B Bonds are being issued to fund a debt service reserve fund for the Bonds. Payment of the principal of and interest on the Bonds will be secured by the payments to be made on the Mortgage Loan and by certain other assets constituting the trust estate under the Indenture.



In this connection, we have examined the Issuer's Documents, the Private Placement Memorandum of the Issuer dated ~~August~~, 199~~3~~, with respect to the Bonds (the "Private Placement Memorandum"), and such certificates of public officials, corporate documents and other records and other certificates, opinions and instruments and have made such other investigations as we have deemed necessary in connection with the opinions hereinafter set forth.

Based upon the foregoing and upon such investigation as we have deemed necessary, we are of the opinion that:

1. The Issuer is a municipal corporation and a political subdivision of the State of Indiana (the "State"), and as such, has full power and authority to undertake the financing of the Project, to execute and deliver each of the Issuer's Documents, to perform its obligations thereunder, to carry out all the transactions contemplated thereby and to issue and sell the Bonds.

2. The Issuer's Documents have been duly and validly authorized, executed and delivered by the Issuer and, assuming due execution and delivery by the other parties thereto, are legal, valid and binding obligations of the Issuer, enforceable in accordance with their respective terms. The Issuer has complied with all provisions of applicable law in all matters relating to the transactions contemplated by the Issuer's Documents.

3. The Bonds have been duly and validly authorized, executed, issued and delivered by the Issuer and constitute legal, valid and binding limited obligations of the Issuer enforceable in accordance with their terms.

4. The ordinance authorizing the issuance of the Bonds has been duly adopted by the Issuer, complies in all respects with the procedural rules of the Issuer and the requirements of State law and remains in full force and effect on the date hereof.

5. The execution and delivery of, the consummation of the transactions contemplated by and the fulfillment and compliance with the terms of, the Issuer's Documents and the Bonds do not and will not violate or conflict with any provision of any applicable statute, or any rule, order, regulation, judgment or decree of any court, agency or other governmental or administrative board or body to which the Issuer is subject, or conflict with or constitute a breach of or a default under the Issuer's charter or any indenture, mortgage, deed of trust, agreement or other instrument to which the Issuer is a party or by which it or any of its properties are bound.

6. No additional or further approval, consent or authorization of any governmental or public agency or authority not already obtained is required by the Issuer in connection with the issuance or delivery of the Bonds to the Placement Agent or entering into and performing its obligations under the Bonds or the Issuer's Documents.

7. The information under the heading "THE ISSUER" in the Private Placement Memorandum prepared in connection with the sale of the Bonds is true and correct, and does not include any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

8. There is no action, suit, proceeding or investigation by or before any court, agency, or other governmental or administrative board or body, pending against the Issuer or to such counsel's knowledge, threatened, challenging or contesting the existence or powers of the Issuer, the authorization of any officers of the Issuer to act in their respective capacities, or the issuance of the Bonds, or in which an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of the Issuer's Documents; the performance by the Issuer of any of its obligations thereunder; or the issuance of the Bonds.

Very truly yours,

[FORM OF OPINION OF COUNSEL TO DEVELOPER]

[Closing Date]

★City of ★Fort Wayne, Indiana  
★Fort Wayne, Indiana

Society National Bank, Indiana,  
as trustee  
South Bend, Indiana

Bank One, Columbus, N.A.  
Columbus, Ohio

★CITY OF ★FORT WAYNE, INDIANA  
\$3,★720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3A

and

★CITY OF ★FORT WAYNE, INDIANA  
\$345,000  
HEALTH CARE FACILITIES TAXABLE REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3B

Dear Ladies and Gentlemen:

We have acted as special counsel to Health Quest Realty ★X, an Indiana ★general partnership organized under the laws of the State of Indiana (the "Developer"), in connection with the issuance of the above-referenced bonds (the "Bonds") and the Developer's execution of the Collateral Deposit Agreement, dated as of ★August 1, 199★3 (the "Collateral Agreement"), among the Developer, ★PNC Bank, Ohio, National Association, and Bank One, Akron, NA.

In our capacity as such counsel, in rendering the opinions set forth below, we have examined among other things, originals or copies, certified or otherwise identified to our satisfaction, of the following documents: (i) the Developer's Partnership Agreement; (ii) the Developer's Certificate of Limited Partnership; (iii) the Collateral Agreement; (iv) the Private Placement Memorandum, dated ★August \_\_, 199★3 (the "Private Placement Memorandum") of the Town of Dyer, Indiana (the "Issuer"), with respect to the Bonds; (v) the Bond Placement Agreement, dated ★August \_\_, 199★3, among the Issuer, the Developer and Bank One, Columbus, N.A., as Placement Agent (the "Bond Placement Agreement"); (vi) the FHA form of Regulatory Agreement between the Developer and the United States Department of Housing and Urban Development (the "FHA Regulatory Agreement") and (vii) such other documents, certificates and instruments as we have deemed necessary for the purposes of reaching the opinion expressed herein. We have also relied as to matters of fact upon certificates of officers of the Developer and examined certain other certificates and documents.

In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to the original document of all documents submitted to us as photostatic or certified copies. We have assumed due authorization, execution and delivery of all documents referenced herein by the parties thereto other than the Developer and that each of such parties has full power, authority and legal right to execute and deliver each such instrument.

Based upon and subject to the foregoing, we are of the opinion that, as of the date hereof:

(i) The Developer is a limited partnership validly existing and in good standing under the laws of the State of Indiana, with full partnership power and authority to execute and deliver the Mortgage Loan Documents and the Collateral Agreement and to perform its obligations under each respective agreement.

(ii) The Mortgage, the Mortgage Note and the Loan Agreement (each, as defined in the Collateral Agreement, and, collectively, the "Mortgage Loan Documents"), the Bond Placement Agreement and the Collateral Agreement have each been duly authorized, executed and delivered by the Developer and constitute legal, valid and binding obligations of the Developer, enforceable in accordance with their respective terms, except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization and similar laws (including fraudulent conveyance laws) affecting the enforcement of creditors' rights and remedies generally in effect from time to time, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding at equity or at law).

(iii) The execution and delivery of the Mortgage Loan Documents, the Collateral Agreement, the Bond Placement Agreement and the performance by the Developer of the terms of the respective agreements do not conflict with or violate the Partnership Agreement, the FHA Regulatory Agreement or any other document, instrument, decree, indenture or agreement by which the Developer is bound.

(iv) No approval, authorization or other action by, or filing with, the State of Indiana, or any agency thereof, is required in connection with the execution and delivery by the Developer of the Bond Placement Agreement and, the Collateral Agreement.

(v) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before any court, public body pending or, to the best of our knowledge, after due inquiry, threatened, to challenge the right, power or authority of the Developer to own and operate the Project (as defined in the Private Placement Memorandum) perform its obligations under the Bond Placement Agreement, the Mortgage Loan Documents, or the Collateral Agreement.

(vi) The information set forth in the Private Placement Memorandum under the captions "THE DEVELOPER" and "THE PROJECT" is true and correct and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(vii) We have no reason to believe that the Private Placement Memorandum (except as to any financial or statistical data included therein, as to which we do not express any opinion), as of the date hereof, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

Very truly yours,

(Form of Opinion of Counsel to the Trustee)

[Closing Date]

★City of ★Fort Wayne, Indiana  
★Fort Wayne, Indiana

Society National Bank, Indiana,  
as trustee  
South Bend, Indiana

Bank One, Columbus, N.A.  
Columbus, Ohio

★CITY OF ★FORT WAYNE, INDIANA  
\$3,★720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3A

and

★CITY OF ★FORT WAYNE, INDIANA  
\$345,000  
HEALTH CARE FACILITIES TAXABLE REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3B

Dear Ladies and Gentlemen:

We have acted as counsel for Society National Bank, Indiana (the "Bank"), in connection with the Bank's serving as trustee under a Trust Indenture dated as of ★August 1, 199★3, between the ★City of ★Fort Wayne, Indiana (the "Issuer"), and the Bank (the "Indenture") relating to the issuance by the Issuer of the above-captioned Bonds (the "Bonds"). All capitalized terms used in this opinion and not otherwise defined shall have the meaning set forth in the Indenture.

In that connection we have examined originals or copies certified or otherwise identified to our satisfaction of the Indenture, and such other documents, and have made such factual inquiries, as we have deemed necessary or desirable for the purpose of rendering the opinion set forth below.

Based on the foregoing we are of the opinion that:

- (i) The Bank is a national banking association, duly organized and validly existing under the laws of the United States;
- (ii) The Bank has taken all corporate action necessary to assume the duties and obligations of the Trustee under the Indenture;



(iii) The Bank has duly authorized the execution and delivery of the Indenture, and, assuming that the Indenture is legally valid and binding upon the Issuer, the Indenture will be the valid, legal and binding obligation of the Bank in its capacity as Trustee, enforceable against the Bank in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights;

(iv) All approvals, consents and orders of any United States banking authority or agency having jurisdiction over the Bank that would constitute a condition precedent to the performance by the Bank of its duties and obligations under the Indenture as Trustee have been obtained and are in full force and effect;

(v) The acceptance by the Bank of the duties and obligations of the Trustee under the Indenture and compliance with the provisions thereof will not conflict with or constitute a breach of or default under any United States or Indiana law or administrative regulation pertaining to the banking and trust powers of the Bank, any consent decree to which the Bank has agreed or any agreement or other instrument to which the Bank is subject; and

(vi) To the best of our knowledge, no litigation is pending or threatened in any way contesting or affecting the existence of powers (including trust powers) of the Bank or affecting the Bank's ability to fulfill its duties and obligations under the Indenture.

Very truly yours,

(FORM OF OPINION OF COUNSEL TO THE  
CUSTODIAN AND THE TENDER AGENT)

[Closing Date]

★City of ★Fort Wayne, Indiana  
★Fort Wayne, Indiana

Bank One, Akron, NA  
Akron, Ohio

Bank One, Columbus, N.A.  
Columbus, Ohio

CERTIFICATES  
Relating to  
★CITY OF ★FORT WAYNE, INDIANA  
\$3,★720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3A

Dear Ladies and Gentlemen:

We have acted as counsel for ★PNC Bank, Ohio, National Association (the "Bank"), in connection with the Bank's serving as Custodian and Tender Agent under a Custody and Tender Option Agreement dated as of ★August 1, 199★3, among Bank One, Akron, NA, as Depositor (the "Depositor"), Bank One, Columbus, N.A., as Remarketing Agent, and the Bank, as Custodian and Tender Agent (the "Agreement") relating to the issuance by the Issuer of the above-captioned Certificates (the "Certificates"). The Bank is also serving as Custodian under the Collateral Deposit Agreement, dated as of ★August 1, 199★3, among the Bank, the Depositor and Health Quest Realty ★X, an Indiana ★general partnership (the "Collateral Deposit Agreement"). All capitalized terms used in this opinion and not otherwise defined shall have the meaning set forth in the Agreement.

In that connection we have examined originals or copies certified or otherwise identified to our satisfaction of the Agreement, the Collateral Deposit Agreement and such other documents, and have made such factual inquiries, as we have deemed necessary or desirable for the purpose of rendering the opinion set forth below.

Based on the foregoing we are of the opinion that:

(i) The Bank is a national banking association, duly organized and validly existing under the laws of the United States;

(ii) The Bank has taken all corporate action necessary to assume the duties and obligations of the Bank under the Agreement;

(iii) The Bank has duly authorized the execution and delivery of the Agreement, and the Collateral Deposit Agreement and, assuming that the Agreement and the Collateral Deposit Agreement are legally valid and binding upon the other parties thereto, the Agreement and the Collateral Deposit Agreement will be the valid, legal and binding obligations of the Bank, enforceable against the Bank in accordance with its terms, except as enforcement thereof may

be limited by bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights;

(iv) All approvals, consents and orders of any United States banking authority or agency having jurisdiction over the Bank that would constitute a condition precedent to the performance by the Bank of its duties and obligations under the Agreement and the Collateral Deposit Agreement have been obtained and are in full force and effect;

(v) The acceptance by the Bank of the duties and obligations under the Agreement and the Collateral Deposit Agreement and compliance with the provisions thereof will not conflict with or constitute a breach of or default under any United States or Ohio law or administrative regulation pertaining to the banking and trust powers of the Bank, any consent decree to which the Bank has agreed or any agreement or other instrument to which the Bank is subject; and

(vi) To the best of our knowledge, no litigation is pending or threatened in any way contesting or affecting the existence or powers (including trust powers) of the Bank or affecting the Bank's ability to fulfill its duties and obligations under the Agreement and the Collateral Deposit Agreement.

Very truly yours,

(FORM OF OPINION OF COUNSEL TO THE DEPOSITOR)

[Closing Date]

★City of ★Fort Wayne, Indiana  
★Fort Wayne, Indiana

Bank One, Akron, NA  
Akron, Ohio

Bank One, Columbus, N.A.  
Columbus, Ohio

CERTIFICATES  
Relating to  
★CITY OF ★FORT WAYNE, INDIANA  
\$3,★720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3A

Dear Ladies and Gentlemen:

We have acted as special counsel for Bank One, Akron, NA (the "Bank"), in connection with the Bank's serving as Depositor and Liquidity Facility Provider under a Custody and Tender Option Agreement (the "Custody and Tender Option Agreement"), dated as of ★August 1, 199★3, among the Bank, Bank One, Columbus, N.A., as Remarketing Agent, and ★PNC Bank, Ohio, National Association, as Custodian and Tender Agent, relating to the issuance of the above-captioned Certificates (the "Certificates"). All capitalized terms used in this opinion and not otherwise defined shall have the meaning set forth in the Custody and Tender Option Agreement.

In connection with this opinion, we have (i) made such investigations of law as we have deemed necessary or appropriate for purposes of this opinion, (ii) examined originals or copies certified or otherwise identified to our satisfaction of the Custody and Tender Option Agreement, the Collateral Deposit Agreement (the "Collateral Deposit Agreement"), dated as of ★August 1, 199★3, between the Bank and Health Quest Realty ★X, an Indiana ★general partnership (the "Developer") and the Remarketing Agreement (the "Remarketing Agreement"), dated as of ★August 1, 199★3, among the Bank, the Developer and the Remarketing Agent, (iii) examined the organizational documents of the Bank and such other certificates of public officials, officers of the Bank and other persons and such other agreements, instruments and other documents as we have deemed necessary or appropriate for purposes of this opinion, and (iv) except with respect to the execution by the Bank of the Custody and Tender Option Agreement, the Collateral Deposit Agreement and the Remarketing Agreement, assumed the authenticity of signatures on original documents submitted to us as certified, conformed or photostatic copies.

Based upon and subject to the foregoing, we are of the opinion that:

1. The Bank is a national banking association duly organized and validly existing under the laws of the United States of America.
2. The execution, delivery and performance by the Bank of the Custody and Tender Option Agreement, the Collateral Deposit Agreement and the Remarketing Agreement has not



resulted and will not result in a violation of its Articles of Association or Bylaws or any laws, rules or regulations to which the Bank is subject which could have any material adverse effect upon the validity or enforceability of any of the terms of the Custody and Tender Option Agreement, the Collateral Deposit Agreement or the Remarketing Agreement.

3. Each of the Custody and Tender Option Agreement, the Collateral Deposit Agreement and the Remarketing Agreement has been duly authorized, executed and delivered by the Bank and, assuming that such document is duly executed and delivered by the other party or parties thereto, constitutes a legal, valid and binding obligation of the Bank enforceable against the Bank in accordance with its terms, except as the binding effect and enforceability thereof are subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws in effect from time to time affecting the rights of creditors generally, including any such laws particularly affecting national banking associations, and except to the extent that the enforceability thereof may be limited by the application of general principles of equity and except that rights to indemnity may be limited by applicable law.

In rendering the foregoing opinions, we express no opinion as to the registration, filing or qualification requirements, if any, required under state securities laws, the Securities Act of 1933, as amended, the Trust Indenture Act of 1939, as amended, or the Investment Company Act of 1940, as amended, with respect to the Certificates or the Bonds or any other security or any documents or agreements related thereto. Furthermore, we express no opinion with respect to the laws of any jurisdiction other than the State of Ohio and the United States of America. In addition, notwithstanding anything herein to the contrary, we express no opinion as to whether funds drawn for payments relating to the Certificates would or would not constitute an avoidable preference with respect to the bankruptcy of the Town/City or the Developer.

With respect to our opinion set forth in paragraph 1 above, we have relied solely on Item 1. of the Certificate attached hereto as Exhibit A. This opinion is furnished by us as counsel to the Bank and is solely for your benefit. Neither this opinion nor copies thereof may be relied upon, be delivered to, or quoted in whole or in part to any governmental agency or other person without our prior written consent.

Respectfully submitted,

[CERTIFICATE OF DEPOSITOR]

CERTIFICATES  
Relating to  
★CITY OF ★FORT WAYNE, INDIANA  
\$3,★720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3A

Bank One, Akron, NA (the "Bank"), by a duly authorized Officer, hereby certifies that the representations of the Bank set forth in Section 7.01 of the Custody and Tender Option Agreement, dated as of ★August 1, 199★3, among the Bank, as Depositor and Liquidity Facility Provider, ★PNC Bank, Ohio, National Association, as Custodian and as Tender Agent, and Bank One, Columbus, N.A., as Remarketing Agent (the "Remarketing Agent"), in Section 2.02 of the Collateral Deposit Agreement, dated as of ★August 1, 199★3, between the Bank and Health Quest Realty ★X, an Indiana ★general partnership, as Owner (the "Owner"), and in Section 12 of the Remarketing Agreement, dated as of ★August 1, 199★3, among the Bank, the Owner and the Remarketing Agent, are true and correct as the date hereof.

BANK ONE, AKRON, NA

Dated: ★August \_\_, 199★3

By: \_\_\_\_\_  
Vice President

TRUSTEE'S CERTIFICATE WITH RESPECT TO BOND  
PROCEEDS AND OTHER AMOUNTS DELIVERED AT CLOSING

★CITY OF ★FORT WAYNE, INDIANA  
\$3,★720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3A

and

★CITY OF ★FORT WAYNE, INDIANA  
\$345,000  
HEALTH CARE FACILITIES TAXABLE REVENUE REFUNDING BONDS  
★HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 199★3B

The undersigned officer of Society National Bank, Indiana, as Trustee (the "Trustee") under the Trust Indenture dated as of ★August 1, 199★3 (the "Indenture"), relating to the above-captioned bonds (the "Bonds"), hereby certifies that:

1. The Trustee has received \$ \_\_\_\_\_ as follows:

Principal Amount of Bonds  
Developer's Contribution \_\_\_\_\_

Total

2. Such amounts have been applied as follows:

Deposit to Acquisition Fund  
Deposit to Cost of Issuance Fund  
Deposit to Bond Fund \_\_\_\_\_

Total

3. The Trustee has also received the sum of \$ \_\_\_\_\_ from the Prior Trustee (as defined in the Indenture). Such amounts have been applied as follows:

Deposit to Debt Service Reserve Fund  
Deposit to Bond Fund \_\_\_\_\_

Total

In witness whereof, I have hereunto set my hand this   15   day of   August  , 199  3  .

Society National Bank, Indiana,  
as Trustee

By: \_\_\_\_\_  
Title: \_\_\_\_\_



KR DRAFT  
06/11/93

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LOAN AGREEMENT

between

CITY OF FORT WAYNE, INDIANA

and

HEALTH QUEST REALTY X

Dated as of August 1, 1993

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THIS LOAN AGREEMENT (this "Agreement"), dated as of August 1, 1993, by and between the CITY OF FORT WAYNE, INDIANA (the "Issuer"), a municipal corporation and a political subdivision of the State of Indiana, and HEALTH QUEST REALTY X, an Indiana general partnership (the "Developer").

W I T N E S S E T H :

WHEREAS, the Issuer has, pursuant to Title 18, Article 6, Chapter 4.5 of the Indiana Code, as amended and now codified as Title 36, Article 7, Chapter 12, and by Ordinance No.

   adopted by the Common Council of the Issuer on   , created as a department of the Issuer, the Fort Wayne Economic Development Commission (the "Commission"); and

WHEREAS, pursuant to the Act the Commission has heretofore authorized the financing for the acquisition and improvement of certain premises in the City of Fort Wayne, Indiana and the construction thereon and equipment of a skilled home project (the "Project"); and

WHEREAS, the Project was financed with the proceeds of \$4,470,000 original principal amount of City of Fort Wayne, Indiana, Health Care Facilities Revenue Bonds, Health Quest Realty X Issue (FHA Insured Project), Series A (the "1983 Bonds") issued by the Issuer on November 15, 1983 pursuant to the Act and the Trust Indenture dated as of November 1, 1983 (the "1983 Indenture") between the Issuer and Society National Bank, Indiana (formerly St. Joseph Bank and Trust Company, South Bend, Indiana); and

WHEREAS, the Issuer loaned (the "1983 Loan") the proceeds of the 1983 Bonds to the Developer pursuant to a Financing Agreement dated as of November 1, 1983 (the "1983 Financing Agreement") between the Issuer and the Developer, pursuant to which the Developer agreed to make payments to provide sufficient funds to pay the principal of and interest on the 1983 Bonds; and

WHEREAS, the 1983 Loan is evidenced by the Developer's note (the "Note") (FHA Form No. 4118-B) in the original principal amount of \$4,010,800, and a Mortgage securing the Note constituting a first lien on the Project (the "Mortgage"); and

WHEREAS, pursuant to a commitment dated October 19, 1983 (the "Commitment") issued to Cambridge Healthcare Funding, Inc. (formerly known as Blyth Eastman Paine Webber Health Care Funding, Inc.) (the "Servicer"), as mortgage servicer, and a Regulatory Agreement with the Developer (the "Regulatory Agreement"), the United States Secretary of Housing and Urban Development, acting through the Federal Housing Commissioner ("FHA"), insured the advances of funds secured by the Mortgage, and the Note was initially endorsed for insurance by FHA pursuant to Section 232 of the National Housing Act, as amended, and the regulations thereunder; and

WHEREAS, the Issuer, as requested by the Developer, has determined to issue, sell and deliver \$3,720,000 City of Fort Wayne, Indiana, Health Care Facilities Revenue Refunding

Bonds, \\Health Quest Realty X Issue (FHA Insured Mortgage) Series \\1993A" (the "Series A Bonds") and \\\$345,000 City of Fort Wayne, Indiana Health Care Facilities Taxable Revenue Bonds \\Health Quest Realty X Issue (FHA Insured Mortgage) Series \\1993 B" (the "Series B Bonds") (together referred to herein as the "Bonds") pursuant to the Act and the Trust Indenture dated as of \\August 1, \\1993 (the "Indenture") between the Issuer and Society National Bank, Indiana, as Trustee, to make funds available for the refunding of the \\1983 Bonds and the refinancing of the Project; and

WHEREAS, upon the redemption of the \\1983 Bonds, the Note and the Mortgage will be held by the Trustee as security for the Bonds and FHA will continue to insure the advances of funds secured by the Mortgage and Note; and

WHEREAS, the Developer has leased the Project (the "Lease") to \\Fountainview Place Corporation of South Bend, an Indiana Corporation doing business as Regency Place of Fort Wayne (the "User"); and

WHEREAS, the Servicer has assigned the Commitment to the Trustee; and

WHEREAS, pursuant to a Servicing Agreement dated as of \\ November 1, \\1983 (the "Servicing Agreement") between the Servicer and the Trustee, the payments required to be made by the Developer pursuant to the Note, the Mortgage and the Regulatory Agreement are to be collected by the Servicer and deposited in the Mortgage Payment Fund and the Reserve Fund for Replacements established pursuant to the Servicing Agreement, and the Servicer will forward to the Trustee, from the Principal and Interest Account of the Mortgage Payment Fund, the payments of, or on account of, principal of and interest on the Note, such payments to be deposited by the Trustee in the Bond Fund established under the Indenture and applied to pay the principal of, premium, if any, and interest on the Bonds;

NOW, THEREFORE, in consideration of the issuance of the Bonds by the Issuer and the loan of the proceeds thereof to the Developer, the mutual covenants and agreements of the parties hereto, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Issuer and the Developer hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1 Definitions. The terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Indenture.

Section 1.2 Rules of Interpretation. The following rules shall apply to the construction of this Agreement unless the context required otherwise: (a) the singular includes the plural and the plural, the singular; (b) words importing any gender include the other genders; (c) references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute to which reference is made and all regulations promulgated pursuant to such

statutes; (d) references to "writing" include printing, photocopy, typing, lithography and other means of reproducing words in a tangible visible form; (e) the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; (f) references to the introductory paragraph, preliminary statements, articles, sections (or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Agreement unless otherwise indicated; (g) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent that such amendments and other modifications are permitted or not prohibited by the terms of this Agreement; (h) references to Persons include their respective successors and assigns permitted or not prohibited by the terms of this Agreement; (i) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles; (j) "or" is not exclusive; (k) provisions apply to successive events and transactions; (l) references to documents or agreements which have been terminated or released or which have expired shall be of no force and effect after such termination, release or expiration; (m) references to mail shall be deemed to refer to first-class mail, postage prepaid, unless another type of mail is specified; (n) all references to time shall be to City of Fort Wayne, Indiana time; (o) references to specific persons, positions or officers shall include those who or which succeed to or perform their respective functions, duties or responsibilities referred to in the Bond proceedings; and (p) the terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Agreement as a whole and not to any particular article, section or subdivision hereof; and the term "heretofore" means before the date of execution of this Agreement, the term "now" means at the date of execution of this Agreement, and the term "hereafter" means after the date of execution of this Agreement.

## ARTICLE II

### THE LOAN

2.1 Issuance of the Bonds. The Bonds issued under the Indenture may be sold in one or more series, at such times, in such amounts, with such provisions, at such interest rates and for such prices as may be approved by the Developer. The Issuer agrees to lend to the Developer, and the Developer agrees to borrow from the Issuer, the proceeds of the Bonds for the purpose of refunding the 1983 Bonds. The loan made to the Developer pursuant to this Agreement shall bear interest at a rate sufficient to provide funds which, together with income from the investment of moneys in the Debt Service Reserve Fund established under the Indenture, shall provide sufficient funds to pay the principal of and interest on the Bonds.

2.2 Payments by the Developer. The Developer shall repay the loan to be made to it pursuant to this Agreement by making payments in amounts sufficient to pay the principal of and interest on the Bonds. As the source of such payments and in full satisfaction of its obligation to make such payments, the Developer shall deliver to the Trustee, as the Issuer's assignee of this Agreement, the Note, secured by the Mortgage, Assignment of Lease dated as of November 1, 1983 between the Developer and Society National Bank, Indiana (formerly, St. Joseph Bank & Trust Co.) (the "Assignment of Lease") and the Security Agreement dated

\\November 15, 1983 between the Developer and Society National Bank, Indiana (formerly, St. Joseph Bank & Trust Co.) (the "Security Agreement").

2.3 Assignment of Loan Agreement; Manner of Payment. As security for the Bonds, the Issuer has, by the Indenture, assigned to the Trustee all of its right, title and interest in and to this Agreement, except for the right of the Issuer to receive indemnity against claims pursuant to Section 3.11 hereof. The Developer consents and agrees to such assignment. The Developer covenants to fully perform, in timely fashion, all of its covenants, agreements and obligations under this Agreement, and to fully perform in timely fashion, all of its covenants, agreements and obligations under the Note, Mortgage, Assignment of Lease, Security Agreement and Regulatory Agreement. The Developer covenants to make all payments required by the Developer under this Agreement to the Trustee, and to make all payments required by the Developer under the Note, the Mortgage or Regulatory Agreement to the Servicer (or the Trustee, as mortgagee under the Mortgage, if the Servicing Agreement is no longer in effect), all without setoff, defense or counterclaim by reason of any dispute which the Developer may have with the Issuer, the Servicer or the Trustee; provided, however, that following the making of any such payment, nothing herein contained shall be construed as prohibiting the Developer from instituting any action against the Issuer, the Servicer or the Trustee arising out of any such dispute.

### ARTICLE III

#### COVENANTS

3.1 Deficiencies in Revenues; Maintenance of Debt Service Reserve Fund. (a) If for any reason amounts received by the Trustee (as mortgagee under the Mortgage) on the account of the principal and interest payments due under the Note, together with other moneys held by the Trustee and then available under the terms of the Indenture, would not be sufficient to make the corresponding payments of principal of and interest on the Bonds when such payments are due, the Developer will pay to the Trustee (as the Issuer's assignee hereunder, and not as mortgagee under the Mortgage) the amounts required from time to time to make up any such deficiency.

(b) The Developer covenants that it shall, at its option, within 60 days of withdrawal by the Trustee of funds from the Debt Service Reserve Fund (as the Issuer's assignee hereunder, and not as mortgagee under the Mortgage), and within 60 days of the valuation of the Debt Service Reserve Fund, pay to the Trustee the amount of such withdrawal and the amount by which the value of the the Debt Service Reserve Fund was less than the Debt Service Reserve Fund Requirement (as defined in the Indenture).

3.2 Tax-Exempt Status of Series A Bonds; Series A Bonds Not to Become Arbitrage Bonds. (a) The Issuer and the Developer hereby covenant to each other and to the holders of the Series A Bonds that they will neither take any action nor execute any agreement or other instrument, nor to their knowledge suffer the same to be done, which would adversely affect the validity, enforceability or tax-exempt status of the Series A Bonds. Without limiting the



generality of the foregoing, the Developer covenants that during the period commencing with the date of delivery of the \\1983 Bonds and ending \\November 15, 1985 it did not enter into any contract or agreement with any person, other than the Lease, or amend any such contract or agreement with respect to the term thereof or the compensation to be paid thereunder, or in any way change the ownership of the Project.

(b) The Issuer and the Developer hereby covenant to the holders of the Series A Bonds that, notwithstanding any other provision of this Agreement or any other instrument, they will neither make, nor instruct the Trustee to make, any investment or other use of the proceeds of the Series A Bonds which would cause the Series A Bonds to be arbitrage bonds under Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, and that they will comply with the requirements of such Section and regulations throughout the term of the Series A Bonds.

**3.3 Limitation on Capital Expenditures.** (a) The Developer represents and warrants that it did not make, or permit a "related person" or "principal user" of the Project to make, any "capital expenditures" (as such terms were used in Section 103 of the Internal Revenue Code of 1954, as amended, and the regulations thereunder (the "1954 Code")) with respect to the Project or other facilities located in \\Fort Wayne, Indiana, or facilities adjacent to or integrated with such facilities, of which the Developer or any "related person" is the owner, occupant or other "principal user" (as used in Section 103 of the 1954 Code) which, when added to the face amount of the Series A Bonds, would have made the total of such face amount, plus all such capital expenditures for the six (6) year period beginning three (3) years prior to the date of issue of the \\1983 Bonds, exceed \$10,000,000.

(b) In the year following the Developer's fiscal year in which the \\1983 Bonds were issued under the \\1983 Indenture, and in each year thereafter for a period of three (3) years, the Developer filed in the office of the Internal Revenue Service where the Developer was required to file its federal income tax return, a supplemental statement listing by date and amount any capital expenditures made by the Developer and all such related persons and principal users with respect to facilities located in \\Fort Wayne, Indiana, or facilities adjacent to or integrated with such facilities, in the preceding calendar year since the date of issue of the \\1983 Bonds.

**3.4 Insurance.** (a) Commencing on the date the Project was first occupied, the Developer has maintained or caused to be maintained, and from the date of the issuance of the Bonds, the Developer will continue to maintain or cause to be maintained with one or more insurance companies authorized and qualified to do business under the laws of the State of Indiana the following kinds of insurance:

- (i) the insurance required by [paragraph 6] of the Mortgage;
- (ii) comprehensive public liability insurance relating to operation of the Project, and automobile liability insurance with limits for liabilities arising from the death or bodily injury of persons of not less than \$1,000,000 per person or occurrence and an

aggregate limitation for claims made in any one year of not less than \$1,000,000 and \$250,000 for damage to the property of others (with an aggregate property damage limitation of not less than \$500,000);

(iii) medical liability, malpractice and other health care facility liability insurance with limits for liabilities arising from professional services performed by the Developer or the User of not less than \$1,000,000 per person or occurrence, and an aggregate limitation for claims made in any one year of not less than \$1,000,000; and

(iv) Workers' Compensation insurance, disability insurance and each other form of insurance which the Developer is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees, provided that such insurance may be provided under a self-insurance program approved by the State of Indiana.

(b) The policies for the insurance required by paragraphs (a)(i) and (a)(ii) of this Section shall be nonassessable and shall be written in the names of FHA, the Trustee (as mortgagee under the Mortgage) and the Developer (and, as appropriate, of any lessee or similarly interested party) as their interests may appear and shall be made payable as provided therein. The policies for such insurance shall not be cancellable without at least 30 days' written notice to the Trustee and shall provide that all losses thereunder which are payable to the Trustee shall be paid to the Trustee notwithstanding any act or neglect of the Developer and the User or other interested party which might otherwise result in a forfeiture of such insurance.

(c) The insurance policies required hereunder or insurance certificates with respect thereto shall be filed with the Trustee, and each such insurance policy shall fully comply with any further requirements imposed by the terms of the Mortgage and the Regulatory Agreement. To the extent that the Developer fails to provide the insurance required by this Section 3.4, the Developer agrees that the Trustee may provide the same at the Developer's expense.

(d) Any appraisal, adjustment or settlement agreed upon between the Developer and any insurer (and any third party, other than the Trustee, in interest) which is evidenced by a certificate of any general partner of the Developer shall be accepted by the Trustee.

**3.5 Application of Proceeds of Insurance.** (a) [Paragraph 7\_] of the Mortgage provides that amounts paid by any insurance company in pursuance of a contract of hazard insurance shall be paid to the mortgagee under the Mortgage, and, at its option, may be applied to the debt or released for the repairing or rebuilding of the premises. The Trustee (as mortgagee under the Mortgage) shall recover and hold, or the Servicer shall recover and hold, for the account of the Trustee, pursuant to the Servicing Agreement, if then in effect, all proceeds of hazard insurance payable to the Trustee, provided that the Developer shall have the sole right to settle any insurance claims. Pending the application of such insurance proceeds pursuant to paragraph (b) below, such insurance proceeds shall be held by the Trustee (as mortgagee under the Mortgage) in a separate subaccount in the Bond Fund, or shall be held by the Servicer, for the account of the Trustee pursuant to the Servicing Agreement, if then in effect, in the

Insurance and Condemnation Proceeds Fund established pursuant to the Servicing Agreement. No such amounts may be so applied or released without the prior approval of FHA. In the event of any damage to any property covered by insurance as required by Section 3.4, the Developer shall immediately notify the Trustee and the Servicer, shall prepare an estimate of the costs of repairing or replacing the damaged property, and (if appropriate) in cooperation with an independent architect, mutually agreed to by the Developer and the Trustee, prepare plans and specifications therefor. If the fire and extended coverage insurance proceeds exceed \$25,000, the estimate of costs of repair or replacement and a copy of any such plans and specifications shall be filed with the Trustee, the Servicer and FHA.

(b) If, within 90 days from the occurrence of such damage or destruction, the Developer and the Trustee agree in writing that the efficient utilization of the Project has not been impaired to such extent that the ability of the Developer, taking into account all financial resources of the Developer, to make the payments required under the Note, the Mortgage and Regulatory Agreement will have been materially adversely affected prior to the completion of the replacement or restoration of such part of the Project so damaged or destroyed, the proceeds of insurance received by reason of such occurrence (after deducting any reasonable expenses incurred by the Trustee, the Servicer or the Developer in collecting the same) shall, subject to any applicable FHA requirements, be applied to the repair or replacement of the property damaged or destroyed. If no such agreement shall be reached within such 90-day period, all respective insurance proceeds (after such deduction) shall, subject to any applicable FHA requirements, be credited to prepayment of the last installments of principal becoming due under the Note and the Mortgage.

(c) If the insurance proceeds are to be credited to prepayment of the last installments of principal due under the Note and the Mortgage, such proceeds shall then become "Net Revenues" (as defined in the Indenture) and shall be deposited in the Bond Fund established under the Indenture and applied to the redemption of Bonds.

(d) If the insurance proceeds are to be applied to the repair or replacement of the property damaged or destroyed, and if such proceeds exceed \$25,000, the insurance proceeds and any income earned in the investment thereof shall be disbursed by the Trustee, or by the Servicer from the Insurance and Condemnation Proceeds Fund, as the case may be, upon receipt of written requisition therefor, each signed by an authorized officer of the Developer. If such insurance proceeds are \$25,000 or less, such proceeds shall, at the request of the Developer, be paid to or upon the order of the Developer, which shall keep them separate from all other funds and use them only to pay the costs of repair or replacement of the property damaged or destroyed. The Developer shall commence and diligently prosecute, or cause to be commenced and diligently prosecuted, the repair or replacement of the property damaged or destroyed in accordance with any plans and specifications approved by an independent architect mutually agreed upon by the Developer and the Trustee and shall pay any amounts required for the completion of such repair or replacement if the insurance proceeds (including any income earned on the investment thereof) are insufficient therefor. If, following the completion of such repair or replacement, any moneys resulting from such proceeds and income from the investment

thereof remain in the Bond Fund, such moneys shall, subject to any applicable FHA requirements, be paid to the Developer.

(e) In the event of any loss or liability for damages for personal injury or death occasioned by reason of the operation of any property or motor vehicles covered by insurance as required by Section 3.4, the public liability insurance, automobile liability insurance or medical liability, malpractice or health care facility liability insurance proceeds shall be paid in respect of such loss or liability.

3.6 Application of Proceeds of Condemnation Compensation. (a) [Paragraph 8] of the Mortgage provides that all proceeds of condemnation shall be assigned to the mortgagee under the Mortgage, to the extent of any indebtedness that remains unpaid. The Trustee (as mortgagee under the Mortgage) shall recover and hold, or the Servicer shall recover and hold, for the account of the Trustee pursuant to the Servicing Agreement, if then in effect, all such proceeds of condemnation. Pending the application of such condemnation proceeds pursuant to paragraph (b) below, such condemnation proceeds shall be held by the Trustee (as mortgagee under the Mortgage) in a separate subaccount in the Bond Fund, or shall be held by the Servicer, for the account of the Trustee pursuant to the Servicing Agreement, if then in effect, in the Insurance and Condemnation Proceeds Fund established pursuant to the Servicing Agreement. No such amounts may be applied or released without the prior approval of FHA. Upon the institution of any condemnation proceedings with respect to the Project, or any portion thereof, the Developer shall immediately notify the Trustee and the Servicer. The Developer shall have the sole right to settle any condemnation award.

(b) The Trustee (as mortgagee under the Mortgage) shall determine whether to apply the same to payment of the installments last due under the Note, and if such proceeds are applied to prepayment of the Note and the Mortgage, such proceeds shall then become Net Revenues and shall be deposited in the Bond Fund and applied to the redemption of Bonds. Any such proceeds received from a taking of less than substantially all of the Project shall be applied as follows:

(i) if no part of the improvements included in the Project is taken or damaged, and the Trustee (as mortgagee under the Mortgage) in its discretion determines that the efficient utilization of the Project is not impaired by such taking, then all of the condemnation proceeds (after deducting the reasonable expenses incurred by the Trustee, the Servicer or the Developer in collecting the same) shall be paid to the Developer subject to any applicable FHA requirements;

(ii) if any part of such improvements is taken or damaged, and if the Trustee (as mortgagee under the Mortgage) in its discretion determines that such repair, rebuilding, restoration or rearrangement of the Project is not possible so as to restore the operational condition of the Project to substantially the condition existing immediately preceding such condemnation, then all of the condemnation proceeds (after deducting the reasonable expenses incurred by the Trustee, the Servicer or the Developer in collecting the same) shall, subject to any applicable FHA requirements, be credited to the

prepayment of last installments of principal becoming due under the Note and the Mortgage, shall become Net Revenues and shall be deposited into the Bond Fund and applied to the redemption of Bonds; and

(iii) if any part of such improvements is taken or damaged, and if the Trustee (as mortgagee under the Mortgage) in its discretion so determines, then all of the condemnation proceeds (after deducting the reasonable expenses incurred by the Trustee, the Servicer or the Developer in collecting the same) and any income earned on the investment thereof, shall, subject to any applicable FHA requirements, be disbursed to the Developer for the repair, rebuilding, restoration or rearrangement of the Project, insofar as may be possible, so as to restore the operational condition thereof to that existing immediately preceding such condemnation, such net condemnation proceeds to be disbursed by the Trustee, or by the Servicer from the Insurance and Condemnation Proceeds Fund upon receipt of written requisition therefor, each signed by an authorized officer of the Developer; and, in such event, the Developer shall commence and diligently prosecute, or cause to be commenced and diligently prosecuted, such repair, rebuilding, restoration or rearrangement of the Project, and shall pay any amounts required for the completion thereof if the condemnation proceeds (including any income earned on the investment thereof) are insufficient therefor; and if, following the completion of such repair, rebuilding, restoration or rearrangement, any moneys remain in the Condemnation Subaccount or the Insurance and Condemnation Proceeds Fund, such moneys shall, subject to any applicable FHA requirements, be paid to the Developer.

3.7 Prepayments Under Note. The Developer shall give 60 days' prior written notice to the Servicer and the Trustee before making any optional prepayment under the Note.

3.8 No Defense or Setoff. The obligations of the Developer to make the payments required under this Agreement, the Note, the Mortgage and the Regulatory Agreement shall be absolute and unconditional without defense or setoff by reason of any default by the suppliers, materialmen or laborers or by the Issuer under this Agreement, or under any other agreement between the Developer and the Issuer, or for any other reason, including, without limitation, destruction of or damage to the Project, commercial frustration of purpose or failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement, it being the intention of the parties that the payments required by this Agreement, the Note, the Mortgage and the Regulatory Agreement will be paid in full when due without any delay or diminution whatsoever; provided, however, that following the making of any such payment nothing herein contained shall be construed as prohibiting the Developer from instituting any action against the Issuer, the Trustee or the Servicer arising out of a dispute concerning such payment.

3.9 Maintenance and Operation of Project; Partnership Existence. The Developer represents and warrants that from the date the Project was first occupied the Project has been maintained and operated as a nursing home and related activities and shall, so long as any of the Bonds are Outstanding, continue to be maintained and operated as a skilled home and related



activities, in accordance with applicable regulations and standards of the Indiana State Board of Health. The Developer covenants that it shall maintain its partnership existence, and that it shall not dispose of all or substantially all of its assets or enter into any consolidation or merger unless the successor or surviving entity is a corporation organized under the laws of a state within the United States, is qualified to do business in Indiana and assumes in writing all obligations of the Developer under the Note, the Mortgage, the Regulatory Agreement, the Assignment of Lease, the Security Agreement and this Agreement.

3.10 Payment of Trustee's Compensation and Expenses. To the extent not paid as provided in Section 7.05 of the Indenture, the Developer will pay the compensation and expenses of the Trustee, including all costs of redeeming Bonds, and will indemnify the Trustee against any liabilities incurred in good faith and without negligence in the exercise and performance of its powers and duties under the Indenture. Such compensation is to be an initial fee in the amount of \\\$\_\_\_\_\_ and an annual fee in the amount of \\\$\_\_\_\_\_% of the aggregate outstanding principal amount of the Bonds, with a minimum of \\\$2,500.

3.11 Indemnity Against Claims. The Developer will protect, exonerate, defend, indemnify and save the Issuer and the Trustee, and their members, officers, officials, employees and the Commission harmless from and against any and all costs or liabilities which may arise or have arisen out of the Project or the making of the loan hereunder (except for any costs or liabilities resulting from the Issuer's negligence or willful misconduct or the Trustee's negligence or willful misconduct), and from and against any and all losses, damages, costs, expenses or liabilities based on personal injury, death or loss or damage to property suffered or incurred by any person, firm or corporation arising out of or attributable to the construction, use, operation or maintenance of the Project, from any breach or default on the part of the Developer in the performance of any covenant to be performed pursuant to the terms of this Agreement, the Note, the Mortgage, the Assignment of Lease, the Security Agreement or the Regulatory Agreement or arising from any act of negligence of the Developer or any of the Developer's agents, contractors, servants, employees or licensees, performing work on or about the Project; and from and against all costs, counsel fees, expenses and liabilities incurred in or about the defense of any such claims or action or proceedings brought thereon.

The Issuer and Trustee, respectively, will give prompt written notice to the Developer of any claim asserted against it or them, as the case may be, which claim, if sustained, may result in liability on the part of the Developer hereunder; provided, however, that the failure on the part of the Issuer or the Trustee to give such notice shall not relieve the Developer from its obligation under this Section 3.11; provided that the Developer shall not be liable for any loss to the extent such loss is due to the failure to give such notice. Upon receipt of such notification, the Developer will assume the defense thereof, with full power to litigate, compromise or settle the same in its sole discretion.

## ARTICLE IV

### DEFAULTS AND REMEDIES

4.1 Events of Default. Failure by the Developer to observe and perform any covenant, agreement or obligation contained in this Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting the same to be remedied, has been given to the Developer by the Servicer or the Trustee, shall constitute an "Event of Default" hereunder; provided that if such failure is of such nature that it can be corrected within a reasonable time (as agreed to by the Servicer and the Trustee) and if the Developer promptly institutes corrective action and is diligently pursuing the same, an Event of Default shall be the failure by the Developer to observe and perform such covenant, agreement or obligation within such reasonable time.

4.2 Defaults Under Agreements. The Developer covenants to notify the Trustee immediately upon receipt of notice of any default under the Note, the Mortgage, the Regulatory Agreement, the Assignment of Lease or the Security Agreement.

4.3 Remedies. Upon the occurrence of an Event of Default, in addition to any other rights which the Issuer or the Trustee may have under law, the Issuer or the Trustee may withhold further performance under this Agreement (including, without limitation, withholding further disbursements from the Mortgage Account, but only if there has occurred an event of default under the Note or the Mortgage) and may also take whatever action at law or in equity may appear necessary or desirable to enforce the performance and observation by the Developer of any of its obligations, agreements or covenants under this Agreement and to collect any payments due or to obtain other remedies; provided, however, that prior to commencing any action, suit or proceeding hereunder against the Developer, the Issuer or the Trustee, as the case may be, shall have received the prior written consent of FHA, if required by FHA.

## ARTICLE V

### MISCELLANEOUS

5.1 Limitation of Liability of the Issuer. Notwithstanding any other provision of this Agreement, in the event of any default by the Issuer hereunder or under the Indenture, any liability of the Issuer shall be enforceable only out of its interest under this Agreement and the moneys to be paid by the Developer, and there shall be no recourse for any claim based on this Agreement, the Indenture or the Bonds against any other property of the Issuer or the Commission or against any officer, employee, official or member, past, present or future, of the Issuer or any successor body as such, either directly or through the Issuer or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, and the liability of the Issuer shall be limited to its interest under this Agreement and the moneys to be paid by the Developer, and the lien of any judgment shall be restricted thereto. In the event of any default by the Issuer hereunder, the liability of the Issuer to the Developer shall be enforceable only out of its interest under this Agreement, and there shall be no other recourse by the Developer against the Issuer or any of the property now or hereafter owned by it.

5.2 Limitation of Developer's Liability. Notwithstanding any other provision of this Agreement, the liability of the Developer or of any of its partners under this Agreement shall be limited to their interest in the Project and the revenues and receipts derived therefrom, and no recourse shall be had against any other properties or funds of the Developer or any of its partners for the payment of any amounts due under this Agreement or in respect of the principal of or interest on the Bonds, or the performance or nonperformance of any of the covenants, agreements or obligations of the Developer under this Agreement or the Indenture.

5.3 Notices. Notices hereunder shall be given to the addresses shown below or to such other address as shall be filed in writing with the parties hereto:

The Issuer	-	<u>\\City of \\Fort Wayne</u> <u>\\City-County Building</u> <u>\\One East Main Street</u> <u>Fort Wayne, Indiana \\46802</u>
The Developer	-	Health Quest Realty <u>\\X</u> 315 West Jefferson South Bend, Indiana 46601
The Trustee	-	Society National Bank, Indiana Corporate Trust Department 202 South Michigan Street South Bend, Indiana 46601

5.4 Assignments. This Agreement may not be assigned by either of the parties hereto without the consent of the other party hereto, except that the Issuer may assign its rights to the Trustee pursuant to Section 2.3 hereof.

5.5 Illegal, Etc. Provisions Disregarded. In case any provision of this Agreement or of the Note or the Mortgage shall for any reason be held invalid, illegal or unenforceable in any respect, this Agreement shall be construed as if such provision had never been contained herein or therein.

5.6 Amendments. This Agreement may not be amended except by an instrument in writing signed by all of the parties hereto and, if such amendment occurs after the issuance of any of the Bonds, consented to by the Trustee, if necessary, in accordance with the provisions of the Indenture.

5.7 Term of Agreement. This Agreement shall become effective upon its delivery and shall continue in force for a term of the lesser of: (i) 20 years from the date hereof, unless at the expiration of such 20-year term, all Bonds have not been fully paid or provision for such payment has not been made as provided in Section 9.01 of the Indenture; or (ii) the date on which the principal of and interest on the Bonds shall have been fully paid, or provision therefor shall have been made as provided in Section 9.01 of the Indenture.

5.8 Successors and Assigns. All covenants, promises and agreements contained in this Agreement by or on behalf of the Developer, the Servicer or the Issuer shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

5.9 Applicable Law. This Agreement shall be governed by, and interpreted under, the laws of the State of Indiana.

5.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute but one and the same document.

WITNESS the due execution of this Loan Agreement as of the day and the year first mentioned above.

[SEAL]  
INDIANA

\\CITY OF \\FORT WAYNE,

Attest:

By: \_\_\_\_\_  
Name:  
Title: Clerk

By: \_\_\_\_\_  
\\Name: \\  
\\Title: \\Mayor

HEALTH QUEST REALTY \\X

By \_\_\_\_\_  
Name: Anthony Wright  
Title: Attorney in Fact



TRUST INDENTURE

between

\\CITY OF \\FORT WAYNE, INDIANA

and

SOCIETY NATIONAL BANK, INDIANA,  
as Trustee

Securing

\\\$3,720,000

\\City of \\Fort Wayne, Indiana  
Health Care Facilities Revenue Refunding Bonds  
\\Health Quest Realty X Issue  
(FHA Insured Mortgage)  
Series \\1993A

and

\\\$345,000

\\City of \\Fort Wayne, Indiana  
Health Care Facilities Taxable Revenue Bonds  
\\Health Quest Realty X Issue  
(FHA Insured Mortgage)  
Series \\1993B

Dated as of \\August 1, \\1993

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## TRUST INDENTURE

THIS TRUST INDENTURE dated as of August 1, 1993 by and between the City of Fort Wayne, Indiana (the "Issuer"), a municipal corporation and a political subdivision of the State of Indiana, and Society National Bank, Indiana (formerly St. Joseph Bank & Trust Company) (the "Trustee"), a national banking association validly existing under the laws of the United States of America;

### W I T N E S S E T H:

WHEREAS, the Issuer has, pursuant to Title 36, Article 7, Chapter 12 of the Indiana Code, as amended and by Ordinance No. [Date], created as a department of the Issuer, the Fort Wayne Economic Development Commission (the "Commission"); and

WHEREAS, pursuant to the Act (as defined herein) the Commission has heretofore authorized and approved the financing of the costs of a project, consisting of the acquisition and improvement of certain premises within the boundaries of the Issuer and construction thereon and equipping of a skilled home facility (the "Project") containing 144 skilled and intermediate care beds, owned by Health Quest Realty X, an Indiana general partnership (the "Developer"); and

WHEREAS, the Project was financed with the proceeds of Issuer's \$4,470,000 aggregate initial principal amount of City of Fort Wayne, Indiana, Health Care Facilities Revenue Bonds, Health Quest Realty X Issue (FHA Insured Project), Series A (the "1983 Bonds") issued pursuant to the Act (as defined herein); and

WHEREAS, to provide for payment of costs of the Project the Issuer loaned the proceeds of the 1983 Bonds (the "Mortgage Loan") to the Developer pursuant to a Financing Agreement dated as of November 1, 1983 (the "Financing Agreement") between the Issuer and the Developer, pursuant to which the Developer agreed to make payments to provide sufficient funds to pay the principal of and interest on the 1983 Bonds; and

WHEREAS, the Mortgage Loan is evidenced by the Developer's mortgage note (the "Mortgage Note") in the original principal amount of \$4,010,800, and a Mortgage securing the Mortgage Note constituting a first lien on the Project (the "Mortgage"); and

WHEREAS, pursuant to a commitment dated October 19, 1983 (the "Commitment for Mortgage Insurance") issued to Cambridge Healthcare Funding, Inc. (formerly known as Blyth Eastman Paine Webber Health Care Funding, Inc.), as Mortgage Servicer and a Regulatory Agreement with the Developer (the "Regulatory Agreement"), the United States Secretary of Housing and Urban Development, acting through the Federal Housing Commissioner ("FHA"), insured the advances of funds secured by the Mortgage, and the Mortgage Note was initially endorsed for insurance by FHA pursuant to Section 232 of the National Housing Act, as amended, and the regulations thereunder; and

WHEREAS, the Issuer, as requested by the Developer, has determined to issue, sell and deliver its \\\$3,720,000 aggregate principal amount \\City of \\Fort Wayne, Indiana, Health Care Facilities Revenue Refunding Bonds, \\Health Quest Realty X Issue (FHA Insured Mortgage) Series \\1993A" (the "Series A Bonds") and its \\\$345,000 aggregate principal amount \\City of \\Fort Wayne, Indiana, Health Care Facilities Taxable Revenue Bonds, \\Health Quest Realty X Issue (FHA Insured Mortgage) Series \\1993B" (the "Series B Bonds") (the Series A Bonds and the Series B Bonds are sometimes referred to herein as the "Bonds") pursuant to Title 36, Article 7, Chapters 11.9 and 12 of the Indiana Code, as amended, and Title 5, Article 1, Chapter 5 of the Indiana Code, as amended (collectively, the "Act") and this Indenture to deposit funds with the Escrow Agent (as described below) for the refunding of the \\1983 Bonds, the refinancing of the Project and to provide for certain costs of issuance of the Bonds; and

WHEREAS, the Issuer and the Developer have entered into a Loan Agreement (the "Loan Agreement") dated as of \\August 1, \\1993, pursuant to which the Developer borrowed funds to provide for the prepayment of the Mortgage Note and the contemporaneous refunding of the \\1983 Bonds; and

WHEREAS, the Issuer and Society National Bank, Indiana, as escrow agent (the "Escrow Agent"), have entered into an Escrow Agreement (the "Escrow Agreement") dated as of \\August 1, \\1993, wherein the Issuer is causing to be irrevocably deposited with the Escrow Agent sufficient moneys to provide for the payment and defeasance of all of the Outstanding \\1983 Bonds; and

WHEREAS, upon the redemption of the \\1983 Bonds, the Mortgage Note and the Mortgage will be held by the Trustee as security for the Bonds and FHA will continue to insure the advances of funds secured by the Mortgage and the Mortgage Note; and

WHEREAS, the Issuer, by Ordinance No. \\adopted by the \\City Council of the Issuer on \\[Date], 1993, approved the issuance of the Bonds for the purpose of redeeming the \\1983 Bonds; and

WHEREAS, all requirements of law have been fully complied with, and all other acts and things necessary to make the Bonds, when executed by the Issuer and when authenticated and delivered by the Trustee, duly issued, legal, valid and binding obligations of the Issuer, and all other acts and things necessary to constitute this Indenture a legal, valid and binding instrument for the security of the Bonds have been done and performed;

NOW, THEREFORE, the Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, does hereby bargain, sell, convey, pledge, assign and grant a security interest unto the Trustee in and to the

following, subject only to the provisions of this Indenture permitting the application thereof or to the purposes and on the terms and conditions set forth herein (said property being herein referred to as the "Trust Estate"), to wit:

#### **GRANTING CLAUSE ONE**

All right, title and interest of the Issuer in the Net Revenues, the Mortgage Loan, the Loan Agreement and the Mortgage Note, the Mortgage and all other security therefor or certificates or instruments evidencing the same, and all amendments, modifications and renewals thereof and any interest earnings thereon.

#### **GRANTING CLAUSE TWO**

All right, title and interest of the Issuer in and to any money held under this Indenture by the Trustee except for (i) moneys and investment securities held by the Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, (ii) moneys and investment obligations held by the Trustee for the payment of the principal of, premium, if any, and accrued interest on the Bonds that have become due and payable but not presented to the Trustee for such payment and (iii) moneys and investment securities held in the Rebate Fund.

#### **GRANTING CLAUSE THREE**

Except for the Rebate Fund, all funds, moneys and securities and any and all other rights and interest in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in said trust and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all owners of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the others of the Bonds, provided that the Rebate Fund and any money or investments required to be deposited therein and any other amount required to be paid to the United States of America shall be held for the benefit of the United States of America and not for the benefit of the owners of the Bonds;

PROVIDED, HOWEVER, that if the Issuer or its successors or assigns shall pay or cause to be paid to the owners of the Bonds the principal of, premium, if any, and interest to become due thereon at the times and in the manner provided in Article IX and if the Issuer shall keep, perform and observe, or cause to be kept, performed and observed all its covenants,

warranties and agreements contained herein, this Indenture and the estate and rights hereby granted shall cease and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey, in accordance with \\Section 9.01 hereof, any property at the time subject to the lien of this Indenture which may then be in its possession, except for the Rebate Fund, except moneys held by the Trustee for the payment of principal of, premium, if any, and interest on the Bonds; otherwise, this Indenture shall be and remain in full force and effect, and upon the trusts and subject to the covenants and conditions hereinafter set forth.

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. The terms defined in this Section 1.01 or in the Preamble hereto (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01 or in the Preamble hereto.

"Act" means collectively Title 36, Article 7, Chapters 11.9 and 12 of the Indiana Code, as amended and Title 5, Article 1, Chapter 5 of the Indiana Code, as amended.

"Authorized Denominations" means \$5,000 or any integral multiple thereof.

"Beneficial Owner" means, with respect to Bonds while in a Book-Entry Form, each person who beneficially owns such Bond(s) and on whose behalf, directly or indirectly, such Bond is held by the Depository pursuant to a Book-Entry System.

"Bond Counsel" means any attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America or the District of Columbia.

"Bond Fund" means the Bond Fund established pursuant to Section 4.03.

"Bondholder" or "Holder" or "Registered Owner," when used with respect to any bond, means the person or persons in whose name such bond is registered, provided that, with respect to Bonds while in Book-Entry Form, for purposes of any consent or approval hereunder, the term "Bondholder" shall mean the Beneficial Owner.

"Bond Register" and "Bond Registrar" have the respective meaning specified in Section 2.06.

"Bond Year" means the period of 12 consecutive months ending on August 1 of any year (providing that the first Bond Year shall mean the period from the Closing Date through August 1, 1993) occurring on or before the final Payment Date on the Bonds.

"Bonds" means collectively the Series A Bonds and the Series B Bonds.

"Book-Entry Form" means a Bond authorized to be issued to, and issued to and registered in the name of, a Depository (or its nominee) directly or indirectly for the beneficial owner thereof, with each maturity evidenced by a single Bond certificate.

"Book-Entry System" means a system of record keeping, securities clearance and funds transfer and settlement maintained for securities by the Depository and Participants.



"Business Day" means any day other than a Saturday, Sunday, a legal holiday or a day on which banking institutions in the State are authorized or required by law to remain closed.

"Certificates" shall have the meaning as set forth in the Custody Agreement.

"Certified Resolution" means a copy of one or more resolutions or ordinances certified by the Clerk-Treasurer of the Issuer under its seal to have been duly adopted by the City Council of the Issuer, and to be in effect on the date of such certification.

"Closing Date" means the date of initial issuance and delivery of the Bonds.

"Code" means the Internal Revenue Code of 1986, as amended, and with respect to a specific section thereof, such reference shall be deemed to include the Regulations promulgated under such section.

"Collateral Agreement" means the Collateral Deposit Agreement, dated as of August 1, 1993, between the Developer and the Depositor.

"Costs of Issuance Fund" means the Costs of Issuance Fund established pursuant to Section 4.03 hereof.

"Custodian" means The Central Trust Company, N.A., as Custodian under the Custody Agreement, and any successors thereto.

"Custody Agreement" means the Custody and Tender Option Agreement, dated as of August 1, 1993, entered into with respect to the Bonds among the Depositor, the Custodian, the Tender Agent and the Remarketing Agent.

"Debt Service" means the amount of principal of, premium, if any, and interest on the Bonds due on any Payment Date.

"Debt Service Reserve Fund" means the Debt Service Reserve Fund established pursuant to Section 4.03 hereof.

"Debt Service Reserve Fund Requirement" means an amount equal to the sum of 12 months' interest on the original principal amount of the Bonds plus one month's interest on the then outstanding principal amount of the Mortgage Note.

"Depositor" means Bank One, Akron, NA, and any successors thereto.

"Depository" means initially DTC, or any other person who shall be a Holder of all Bonds directly or indirectly.

"DTC" means The Depository Trust Company in New York, New York or its successors or assigns, for the benefit of beneficial owners and approved by the Developer and the Trustee

to act as the Depository, provided that any Depository shall be registered or qualified as a "clearing agency" within the meaning of Section 17A of the Securities Exchange Act of 1934, as amended.

"Developer" means Health Quest Realty \X, an Indiana \general partnership.

"Escrow Agent" means Society National Bank, Indiana as Escrow Agent under the Escrow Agreement.

"Escrow Agreement" means the agreement, dated as of \August 1, \1993, between the Issuer and the Escrow Agent.

"Excess Revenues" means the Net Revenues remaining after all deposits of Net Revenues have been made pursuant to Sections 4.04(a), (b) and (c) hereof.

"Expense Fund" means the Expense Fund established pursuant to Section 4.03 hereof.

"FHA" means the Federal Housing Administration, an organizational unit within HUD.

"HUD" means the U.S. Department of Housing and Urban Development and its successors and assigns.

"Indenture" means this Trust Indenture and all indentures supplemental hereto.

"Investment Agreement" means the Investment Agreement, dated \August 24, \1993, between the Trustee and [Berkshire Hathaway Inc.].

"Investment Agreement Provider" means, initially, [Berkshire Hathaway, Inc.], or another entity, the unsecured long-term debt rating of which is rated by the Rating Agency with a rating at least as high as the rating on the Bonds.

"Investment Securities" means any of the following that at the time are lawful investments under the laws of the State for the money held hereunder: (1) direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof when such obligations are backed by the full faith and credit of the United States, which obligations include the following: (i) United States Treasury obligations which are direct or fully guaranteed obligations; (ii) obligations, debentures, notes or other evidences of indebtedness issued or guaranteed by the Government National Mortgage Association; (iii) Federal Housing Administration debentures; (iv) Federal Home Loan Mortgage Corporation participation certificates and senior debt obligations fully guaranteed as to timely payment of principal and interest; (v) Federal National Mortgage Association's mortgage-backed securities and senior debt obligations (excluded are stripped principal-only mortgage securities which are valued greater than par on the portion of unpaid principal and stripped interest-only mortgage securities); (vi) non-callable obligations of the Resolution Funding Corporation representing an undivided interest in payments of interest from Resolution Funding Corporation

obligations; (2) certificates of deposit, time deposits, bankers acceptances (having maturities of not more than 365 days) and repurchase agreements collateralized by obligations described in clause (1) hereof of any bank the unsecured debt obligations of which (or, in the case of the principal bank in a bank holding company, senior unsecured debt obligations of the bank holding company) have been rated AA3P-1 by Moody's; (3) deposits which are fully insured by the Federal Deposit Insurance Corporation or its successor; (4) investment agreements, having similar rates and terms as the Investment Agreement and acceptable to the agency rating the Bonds, with institutions whose unsecured debt or claims paying ability, as the case may be, is and continues to be at all times rated by Moody's or, if Moody's no longer maintains a rating on the Bonds, any other nationally recognized bond rating agency then maintaining a rating on the Bonds at least equal to the rating on the Bonds; (5) units of a taxable money market portfolio rated in the highest rating category by Moody's; (6) the Investment Agreement; and (7) obligations the interest on which is excluded from gross income pursuant to Section 103 of the Code (including investment in regulated investment companies that invest exclusively in such obligations), provided that such obligations are not specified private activity bonds within the meaning of Section 57(a)(5)(C) of the Code and have a Moody's rating of at least Aa or P-.

"Letter of Representations" means the Letter of Representations among the Depository, the Issuer and the Trustee entered into in connection with issuance of the Bonds and any amendments or supplements thereto.

"Loan" means the loan from the Issuer to the Developer, pursuant to the Loan Agreement, to provide for the prepayment of the \\1983 Bonds.

"Loan Agreement" means the Loan Agreement dated as of \\ August 1, \\1993 between the Issuer and the Developer, and any amendments or supplements thereto.

"Moody's" means Moody's Investors Service.

"Mortgage" means the Mortgage executed by the Developer concurrently with the delivery of the \\1983 Bonds, delivered by the Developer to the Mortgage Servicer, and assigned to the Trustee, as mortgagee, or granted to the Mortgage Servicer and assigned to the Trustee, together with the building loan agreement(s) and regulatory agreement(s) incorporated therein by reference.

"Mortgage Loan" means the FHA-insured mortgage loan made to the Developer by the Issuer to finance the construction and equipping of the Project.

"Mortgage Note" means the Mortgage Note executed by the Developer concurrently with the delivery of the \\1983 Bonds, and delivered by the Developer to the Mortgage Servicer, and assigned to the Trustee, as mortgagee under the Mortgage in the original principal amount of \\\$4,010,800 or any portion thereof which note or portion thereof will heretofore evidence the indebtedness of the Developer under the Loan Agreement and secures the Bonds.

"Mortgage Servicer" means Cambridge Healthcare Funding, Inc. and its successors and assigns.

"National Housing Act" means the National Housing Act of 1934, as amended.

**"Net Revenues" means all income, revenues, proceeds and other amounts received by the Issuer or the Trustee from or in connection with the Mortgage Loan (including any prepayments thereof) and any and all interest, profits or other income derived from the investment of amounts in any funds or accounts (but not the Rebate Fund) established pursuant to this Indenture, but shall not include (i) amounts retained by the Mortgage Servicer as a servicing fee, (ii) any payments received by the Trustee which are to be applied by the Trustee (as mortgagee under the Mortgage), pursuant to paragraph (9)(c)(I) or (II) of the Mortgage or (iii) any funds held by the Trustee (as mortgagee under the Mortgage) on behalf of the Developer pursuant to the Mortgage or the Regulatory Agreement.**

"1954 Code" means the Internal Revenue Code of 1954, as amended and in effect prior to the enactment of the Tax Reform Act of 1986, and with respect to a specific section thereof, such reference shall be deemed to include the Regulations promulgated under such section.

\\1983 Bonds" shall have the same meaning as that term is defined in the Preamble to this Indenture.

"Notice Address" means, with respect to each of the Persons listed below, the address set forth below until such time as such Person shall have notified each of the other Persons listed below of a new Notice Address.

If to the Issuer:

\\City of \\Fort Wayne  
\\City-County Building  
\\One East Main Street  
Fort Wayne, Indiana \\46802  
Attention:

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If to the Trustee: (For Transfers and Redemptions)	Society National Bank, Indiana Corporate Trust Services 1900 Pacific Avenue 16th Floor, Tower Dallas, Texas 75201-4501
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**Notices Only**

Society National Bank, Indiana  
202 South Michigan Street  
South Bend, Indiana 46601-0006  
Attention: Corporate Trust Department

If to HUD or FHA:

U.S. Department of Housing and  
Urban Development  
451 Seventh Street, S.W.  
Washington, D.C. 20410

"Ordinance" means Ordinance No.    \\of the Issuer adopted on \\[Date], 1993.

"Outstanding," when used with respect to the Bonds, means all Bonds theretofore authenticated and delivered under this Indenture, except:

(a) Bonds theretofore cancelled by the Trustee or theretofore delivered to the Trustee for cancellation;

(b) Bonds for the payment or redemption of which money or obligations shall have been theretofore deposited with the Trustee in accordance with Article IX; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Indenture.

In determining whether the holders of a requisite aggregate principal amount of Outstanding Bonds have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions of this Indenture, Bonds that are owned by the Developer or the Issuer or any affiliate of any one of said entities (for the purpose of this definition, an "affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person) shall be disregarded and deemed not to be outstanding hereunder for the purpose of any such determination. For purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing. Bonds so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Developer, the Issuer or any other obligor on the Bonds. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. The Trustee may conclusively assume that all Bonds are not so owned unless it has written notice to the contrary which references this Indenture.

"Payment Date" means, (i) with respect to the Series A Bonds, from the Closing Date and while the Certificates bear interest at the Weekly Reset Rate, the first day of each month, provided, however, that while the Certificates bear interest at the Term Reset Rate, and upon receipt by the Trustee of the Notice of Termination of Custody and Tender Option Agreement from the Custodian substantially in the form attached to the Custody Agreement, such Payment

Date shall occur on each February 1 and August 1; and (ii) with respect to the Series B Bonds, February 1 and August 1, commencing on February 1, 1994.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Project" means the nursing home facility located within the boundaries of the Issuer and more particularly described in Exhibit A to the Loan Agreement, financed with the proceeds of the 1983 Bonds.

"Qualified Expenses" means the following: (i) the annual accrued fees and expenses of the Trustee, to the extent not otherwise paid, including, among others, all expenses incurred by the Trustee in connection with the determination and adjustments required of it pursuant to Sections 4.10, 5.08 and 5.10 hereof, payable semi-annually in advance on each February 1 and August 1, commencing February 1, 1994; and (ii) the annual fees and expenses of the Rebate Consultant in an amount not to exceed [\$ ] per year of the then outstanding principal amount of the Mortgage payable semi-annually in advance on each February 1 and August 1, commencing February 1, 1994.

"Rating Agency" means Moody's Investors Service and its successors and assigns.

"Rebate Consultant" means Kutak Rock, Omaha, Nebraska, and its successors and assigns.

"Rebate Fund" means the Rebate Fund established pursuant to Section 4.03.

"Regular Record Date" means, with respect to a Payment Date, the close of business on the 15th day of the month immediately preceding such Payment Date whether or not a Business Day.

"Regulations" means the proposed, temporary or final income tax regulations promulgated under the Code, or under the 1954 Code, and effective under the Code, as such regulations may be amended from time to time.

"Regulatory Agreement" means the Regulatory Agreement dated [Date], between the Developer and FHA.

"Remarketing Agent" means Bank One, Columbus, N.A. and any successors thereto.

"Series A Bonds" means \$3,720,000 original aggregate original principal amount of City of Fort Wayne, Indiana Health Care Facilities Revenue Refunding Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993A.



"Series B Bonds" means \\\$345,000 original aggregate principal amount of \\City of Fort Wayne, Indiana Health Care Facilities Taxable Revenue Bonds \\Health Quest Realty X Issue (FHA Insured Mortgage) Series \\1993B.

"Servicing Agreement" means the Servicing Agreement entered into between the Mortgage Servicer and the Trustee dated as of \\ November 1, \\1983, and any amendments or supplements thereto.

"State" means the State of Indiana.

"Stated Maturity" means, with respect to the Series A Bonds, August 1, \\2013, and with respect to the Series B Bonds, August 1, \\2002.

"Supplemental Indenture" or "Indenture Supplemental" hereto means any indenture supplemental to this Indenture, now or hereafter authorized and entered into in accordance with the provisions of this Indenture.

"Tax Regulatory Agreement" means the the Tax Regulatory Agreement and No Arbitrage Certificate dated as of \\August 1, \\ 1993 among the Issuer, the Trustee and the Developer.

"Tender Agent" means The Central Trust Company, N.A., the Tender Agent under the Custody Agreement, and any successors thereto.

"Term Reset Rate" shall have the same meaning as set forth in the Custody Agreement.

"Trustee" means Society National Bank, Indiana, as trustee under this Indenture and any successors in trust hereunder.

"Trustee's Fee" means the fee charged by the Trustee for performance of its obligations hereunder, initially in the amount of \\\$[ ], and thereafter \\[ ]% of the aggregate outstanding principal amount of the Bonds, with a minimum of \\ \$[ ] per year.

"Trust Estate" means the property rights, money, securities and other amounts pledged and assigned pursuant to the Granting Clauses of this Indenture.

"Weekly Reset Rate" shall have the same meaning as set forth in the Custody Agreement.

**Section 1.02. Rules of Interpretation.** The following rules shall apply to the construction of this Indenture unless the context required otherwise: (a) the singular includes the plural and the plural, the singular; (b) words importing any gender include the other genders; (c) references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute to which reference is made and all regulations promulgated pursuant to such statutes; (d) references to "writing" include printing, photocopy, typing, lithography and other means of reproducing words in a tangible visible form; (e) the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; (f) references

to the introductory paragraph, preliminary statements, articles, sections (or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Indenture unless otherwise indicated; (g) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent that such amendments and other modifications are permitted or not prohibited by the terms of this Indenture; (h) references to Persons include their respective successors and assigns permitted or not prohibited by the terms of this Indenture; (i) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles; (j) "or" is not exclusive; (k) provisions apply to successive events and transactions; (l) references to documents or agreements which have been terminated or released or which have expired shall be of no force and effect after such termination, release or expiration; (m) references to mail shall be deemed to refer to first-class mail, postage prepaid, unless another type of mail is specified; (n) all references to time shall be to Columbus, Ohio time; (o) references to specific persons, positions or officers shall include those who or which succeed to or perform their respective functions, duties or responsibilities referred to in the Bond proceedings and (p) the terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Indenture as a whole and not to any particular article, section or subdivision hereof; and the term "heretofore" means before the date of execution of this Indenture, the term "now" means at the date of execution of this Indenture, and the term "hereafter" means after the date of execution of this Indenture.

Section 1.03. Miscellaneous Rules. (a) Counsel Opinions. Any opinion of counsel may be qualified by reference to the constitutional powers of the United States of America and the State, the police and sovereign powers of the State, judicial discretion, equitable principles, and bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights and similar matters.

(b) Consolidated Certifications, Opinions and Instruments. In any case where several matters are required to be certified by, or covered by an opinion of, any specified person, it shall not be necessary that all such matters be certified by, or covered by the opinion of, only one such person, or that they be so certified or covered by only one document, but one such person may certify or give an opinion with respect to some matters and one or more other such persons as to other matters, and any such person may certify or give an opinion as to such matters in one or several documents. When any person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, such instruments may, but need not, be consolidated and form one instrument.

[End of Article I]

## ARTICLE II

### THE BONDS

Section 2.01. Authorized Amount of Bonds; Details of Bonds; Limited Obligation of the Issuer. (a) Bonds may not be issued under this Indenture except in accordance with this Article. There is hereby created and there shall be two issues of Bonds designated (i) "City of Fort Wayne, Indiana Health Care Facilities Revenue Refunding Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993A" in the aggregate original principal amount of \$3,720,000 and (ii) "City of Fort Wayne, Indiana Health Care Facilities Taxable Revenue Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993 B" in the aggregate original principal amount of \$345,000. The Bonds shall provide that the principal of, premium, if any, and interest on the Bonds shall be payable only out of the Trust Estate and that there shall be no other recourse against the Issuer or any property now or hereafter owned by it. The Series A Bonds and the Series B Bonds shall be secured equally and ratably by the Trust Estate.

(b) The Bonds shall be dated August 1, 1993, and shall be issuable in fully registered form without coupons in Authorized Denominations. The Series A Bonds shall bear interest, computed on the basis of a 360-day year of twelve 30-day months and initially payable monthly on each Payment Date until the principal sum is paid or duly provided for, at 10.25% per annum, and shall mature on August 1, 2013 and be issued in the original aggregate principal amount of \$3,720,000.

(c) The Series B Bonds shall have a principal amount of \$345,000, a stated maturity of August 1, 2002 and shall bear interest at the rate of 8% per annum. The Series B Bonds shall bear interest, computed on the basis of a 360-day year of twelve 30-day months, payable on each Payment Date until the principal sum is paid or duly provided for.

(d) The Person in whose name any Bond is registered on the Regular Record Date with respect to a Payment Date shall be entitled to receive the interest payable on such Payment Date (unless such Bond has been called for redemption on a redemption date which is prior to such Payment Date) notwithstanding the cancellation of such Bond upon any registration of transfer or exchange thereof subsequent to such Regular Record Date and prior to such Payment Date; provided, however, that, if and to the extent the Issuer shall default in the payment of the interest due on any Payment Date, such defaulted interest shall be paid as provided in the next paragraph.

Principal of, premium, if any, and interest on the Bonds shall be payable to Holders in lawful money of the United States of America. Any interest on any Bond that is payable, but is not punctually paid or duly provided for, on any Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Bondholder on the relevant Regular Record Date by virtue of having been such Bondholder. The Trustee may elect to make payment of any Defaulted Interest to the Persons in whose names the Bonds (or their respective predecessor Bonds) are registered at the close of business on a special record date for the payment of such

Defaulted Interest (a "Special Record Date"), which shall be fixed in the following manner. The Trustee shall determine the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment, shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class, postage prepaid, to each Bondholder at his address as it appears in the Bond Register not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefore having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Bonds (or their respective predecessor Bonds) are registered on such Special Record Date.

Principal of, and premium, if any, and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be paid by check mailed to the Person entitled thereto at the address as it appears on the Bond Register or at such other address as is furnished to the Trustee in writing by such Person. Principal of, and premium, if any, on the Bonds shall be payable upon presentation thereof at the operations office of the Trustee as the same shall become due and payable. The Trustee shall, upon the written request of any holder of \$1,000,000 or more in aggregate principal amount of the Bonds, make payments of principal of or interest on such Bonds by wire transfer in immediately available funds (indicating the CUSIP number of the Bonds with respect to which such payment is being made) to the account of such holder designated by such holder to the Trustee in writing at least five days before the Regular or Special Record Date for such payment or at least five days before presentment.

(e) The Bonds initially will be delivered by means of a Book-Entry System with no physical distribution of definitive Bonds made to the public. One definitive Bond for each maturity is to be delivered to The Depository Trust Company, New York, New York ("DTC"), and immobilized in its custody. Initially, a Book-Entry System will be employed, evidencing ownership of the Bonds in Authorized Denominations, with transfers of beneficial ownership effected on the records of DTC and its participants (the "DTC Participants") pursuant to rules and procedures established by DTC.

Each DTC Participant will be credited in the records of DTC with the amount of such DTC Participant's interest in the Bonds. Beneficial ownership interests in the Bonds may be purchased by or through DTC Participants. The holders of these beneficial ownership interests are hereinafter referred to as the "Beneficial Owners." The Beneficial Owners will not receive definitive Bonds representing their beneficial ownership interests. The ownership interests of each Beneficial Owner will be recorded through the records of the DTC Participant \\from which such Beneficial Owner purchased its Bonds. Transfers of ownership interests in the Bonds will be accomplished by book entries made by DTC and, in turn, by DTC Participants acting on behalf of Beneficial Owners.

Payments of principal, premium if any, and interest with respect to the Bonds, so long as DTC is the only Owner of the Bonds, will be paid by the Trustee directly to DTC or its

nominee, Cede & Co., as provided in the Letter of Representations dated August 1, 1993 from the Issuer and the Trustee to DTC (the "Letter of Representation"). DTC will remit such payments to DTC Participants, and such payments thereafter will be paid by DTC Participants to the Beneficial Owners. The Trustee and the Issuer are not and will not be responsible or liable for payment by DTC or DTC Participants, for sending transaction statements or for maintaining, supervising or reviewing records maintained by DTC or DTC Participants.

If (i) DTC determines not to continue to act as Depository for the Bonds or (ii) the Trustee or the Issuer determines that the continuation of the Book-Entry System of evidence and transfer of ownership of the Bonds would adversely affect the interests of the Issuer or the Beneficial Owners of the Bonds, the Issuer may discontinue the Book-Entry System with DTC. If the Issuer fails to identify another qualified Depository to replace DTC, the Issuer will deliver fully registered definitive Bonds to each Beneficial Owner in Authorized Denominations as such Owner may request.

The Trustee agrees that it will undertake the duties of Agent (as that term is defined in the Letter of Representations) set forth in the Letter of Representations and that those duties to be undertaken by either the Agent or the Issuer in paragraphs 2, 3, 4 and 12 thereof shall be the responsibility of the Trustee.

(f) The Bonds shall be subject to redemption as provided in Article III hereof.

(g) No additional bonds are authorized to be issued under this Indenture.

(h) The Bonds are limited obligations of the Issuer. Neither the Commissioners of the Issuer nor any persons executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds shall not be a debt of the State of Indiana, or any political subdivision thereof (other than the Issuer), and neither the State of Indiana or any political subdivision thereof (other than the Issuer) shall be liable thereon, nor in any event shall the Bonds be payable out of any funds or properties other than those of the Issuer specifically pledged thereto. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. The Bonds are not a debt of the United States of America, HUD or any other federal governmental agency or the FHA and are not guaranteed by the full faith and credit of the United States.

**Section 2.02. Authorization of Bonds; Sale and Delivery of the Bonds.** Upon execution and delivery of this Indenture, the Trustee shall authenticate and deliver the Bonds to DTC, but only upon the receipt of the following:

(1) A written order of the Issuer directing the Trustee to authenticate and deliver the Bonds against receipt of the purchase price therefor;

(2) A copy, duly certified on behalf of the Issuer, of the Ordinance authorizing the issuance and delivery of the Bonds;

- (3) An approving opinion of Bond Counsel regarding the validity of the Bonds and the exclusion of interest on the Series A Bonds from gross income for federal income tax purposes;
- (4) An executed counterpart of the Loan Agreement;
- (5) A copy of the executed Mortgage Note and Mortgage;
- (6) Copies of the Regulatory Agreement, Servicing Agreement and FHA insurance; and
- (7) Such other documents, certificates and opinions of counsel as the Issuer and Bond Counsel have advised the Trustee that they have reasonably requested.

Section 2.03. Execution. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the \\Mayor of the \\City and Clerk \\or Assistant Clerk of the Issuer under the corporate seal, or facsimile thereof, of the Issuer. Any facsimile signatures shall have the same force and effect as if said person had manually signed the Bonds. Any reproduction of the official seal of the Issuer on the Bonds shall have the same force and effect as if the official seal of the Issuer had been impressed on the Bonds.

In case any officer whose signature or facsimile of whose signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes as if he had remained in office until delivery.

Section 2.04. Authentication. Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the forms set forth in Exhibit A and Exhibit B hereto for the Series A Bonds and the Series B Bonds, respectively, duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized representative of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all the Bonds.

Section 2.05. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate and deliver a new Bond in lieu of such mutilated, lost, stolen or destroyed Bond, of like maturity and denomination as that mutilated, lost, stolen or destroyed. Any mutilated Bond shall first be surrendered to the Issuer, and in the case of any lost, stolen or destroyed Bond, there shall first be furnished to the Trustee by the person in whose name the Bond is registered evidence of such loss, theft or destruction satisfactory to it together with indemnity satisfactory to it. In the event any such Bond shall have matured, instead of issuing a duplicate Bond, upon the furnishing of



evidence of such loss, theft or destruction together with indemnity satisfactory to it, by the person in whose name such Bond is registered, the Trustee may pay the same without surrender thereof. The Trustee may charge the holder or owner of such Bond with its reasonable fees and expenses in connection with such replacement.

**Section 2.06. Transfer of Registration and Exchange of Bonds; Persons Treated as Owners.** The Trustee is hereby appointed Bond Registrar and shall cause a register (herein sometimes referred to as the "Bond Register") to be kept for the registration of Bonds and the registration of transfers of Bonds. The registration of any Bond may be transferred only upon an assignment duly executed by the registered holder or his duly authorized representative in such form as shall be satisfactory to the Trustee, and upon surrender of such Bond to the Trustee for cancellation. Whenever any Bond or Bonds shall be surrendered for registration of transfer, the Issuer shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of like maturity of authorized denomination or denominations and for the aggregate principal amount of such Bond or Bonds so surrendered.

In the case of the transfer of any Bond pursuant to the preceding paragraph, any Bond may be exchanged at the office of the Trustee, for a new Bond or Bonds, of any authorized denomination or denominations and for the aggregate principal amount of such Bond then remaining Outstanding.

In all cases in which the registration of Bonds shall be transferred and Bonds shall be exchanged hereunder, the Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange. The Trustee shall not be required to transfer any Bond after the mailing of notice calling such Bond for redemption has been made.

The Person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of and interest on, and premium, if any, on any such Bond shall be made only to or upon the order of such person thereof, or his legal representative, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums to be paid.

**Section 2.07. Temporary Bonds.** Until definitive Bonds are ready for delivery, there may be executed, and upon the written request of the Issuer, the Trustee shall authenticate and deliver, in lieu of definitive Bonds, one or more temporary typewritten, printed, engraved or lithographed Bonds, in any appropriate denomination, in fully registered form, and of substantially the tenor hereinabove set forth and with such appropriate omissions, insertions and variations as may be required.

If temporary Bonds shall be issued, the Issuer shall cause the definitive Bonds to be prepared and to be executed and delivered to the Trustee, and the Trustee, upon presentation to it at its operations office of any temporary Bond, shall cancel the same and authenticate and deliver in exchange therefor, without charge to the owner thereof, a definitive Bond or Bonds

of an equal aggregate principal amount of the same maturity and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefit and security of this Indenture as the definitive Bonds to be issued and authenticated hereunder. Principal of, premium, if any, and interest on temporary Bonds, when due and payable, if the definitive Bond shall not be ready for exchange, shall be paid on presentation of such temporary Bonds for notation of such payment thereon by the Trustee.

[End of Article II]

## ARTICLE III

### REDEMPTION OF BONDS

Section 3.01. Redemption of Bonds. The Bonds are subject to redemption prior to maturity as provided below.

(a) Optional Redemption. The Bonds are subject to redemption prior to maturity by the Issuer, but only upon the request of the Developer at any time in order of maturity and within a maturity by lot, from optional prepayments of principal on the Mortgage Note made by the Developer, or from proceeds of refunding bonds, and deposited in the Redemption Fund established under this Indenture, in an aggregate amount which, together with all such prior redemptions under this paragraph during the then current calendar year, does not exceed \\\$[\_\_\_\_\_]. Any such redemption shall be made at a redemption price of 100% of the principal amount thereof, plus interest accrued to the redemption date.

The Bonds are also subject to redemption prior to maturity by the Issuer, but only upon the request of the Developer, in whole at any time, or in part on any February 1 or August 1 on or after the Closing Date in order of maturity and within a maturity by lot, from optional prepayments of principal on the Mortgage Note made by the Developer, or from the proceeds of refunding bonds, and deposited in the Redemption Fund established under this Indenture. Any such redemption shall be made at a redemption price (shown below as a percentage of the principal amount to be redeemed which is in excess of \\\$[\_\_\_\_\_] in any calendar year), plus interest accrued to the redemption date:

<u>Redemption Periods</u>	<u>Redemption Prices</u>
Closing Date through July 31, \\1994	102%
August 1, \\1994 through July 31, \\1995	101.5
August 1, \\1995 through July 31, \\1996	101
August 1, \\1996 through July 31, \\1997	100.5
August 1, \\1997 and thereafter	100

In the event of an optional redemption of Bonds on a date on which the redemption price includes a redemption premium, the Trustee shall not give notice of such redemption unless (i) the Trustee shall have received an opinion of bankruptcy counsel, acceptable to the Trustee, to the effect that payment of such money to Bondholders would not constitute a voidable preference under Section 547 or be recoverable under Section 362 or Section 550(a) of the United States Bankruptcy Code in the event of the bankruptcy of the Developer; and (ii) the Trustee shall have received the prepayment of the Mortgage Loan.

(b) Special Mandatory Redemption Provisions. The Bonds are subject to special mandatory redemption before maturity (i) as a whole or in part, at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the redemption date in direct order of maturity on each February 1 or August 1 from Excess Revenues transferred from the Bond

Fund to the Redemption Fund for such purpose pursuant to Section 4.09 hereof and (ii) as a whole, on any February 1 or August 1 for which proper notice of redemption can be given pursuant to Section 3.05, if the sum of the amount held in the Bond Fund, the Debt Service Reserve Fund, Expense Fund and the Redemption Fund equals or exceeds the redemption price of the Bonds then Outstanding, plus Qualified Expenses then due and payable, from any amounts held in such funds.

(c) Casualty and Condemnation Redemption. The Bonds are subject to redemption in whole or in part on the earliest practicable date for which proper notice of redemption can be given pursuant to Section 3.05 at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption to the extent the proceeds of any condemnation award or insurance recovery are applied to the prepayment of the Mortgage Note (along with a proportionate reduction of the Debt Service Reserve Fund as described in Section 3.02).

(d) Extraordinary Redemption From FHA Mortgage Insurance Benefits in Cash. To the extent that FHA mortgage insurance benefits are paid to the Trustee in cash, the Trustee shall redeem the Bonds, in whole or in part, on the earliest practicable date for which proper notice of redemption can be given pursuant to Section 3.05 at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption.

(e) Redemption After Receipt of FHA Mortgage Insurance Benefits in Debentures. If FHA mortgage insurance benefits are paid to the Trustee in FHA debentures and such FHA debentures can be sold or tendered to HUD at a price (together with other amounts held under the Indenture other than the Rebate Fund) sufficient to redeem the Bonds, the Trustee shall redeem Bonds in whole therefrom on the earliest practicable date for which proper notice of redemption can be given pursuant to Section 3.05 at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption.

(f) Redemption in the Event of Loan Default or Bankruptcy. The Bonds shall be called for redemption in whole or in part on the earliest practicable date for which proper notice of redemption can be given pursuant to Section 3.05 at a redemption price of 100% of the principal amount, plus accrued interest to the date of redemption in the event that prepayment of the Mortgage Note is required to be made (i) pursuant to applicable rules, requirements or policies of HUD in order to avoid an FHA mortgage insurance claim or otherwise, claim or (ii) without premium while under the supervision of a trustee in bankruptcy proceedings (along with a proportionate reduction of the Debt Service Reserve Fund as described in Section 3.02).

Section 3.02. Reduction in Debt Service Reserve Fund. If a redemption of Bonds occurs as a result of a reduction in the principal balance of the Mortgage Loan, the Trustee shall transfer from the Debt Service Reserve Fund to the Bond Fund any amount by which the balance maintained following such redemption in the Debt Service Reserve Fund exceeds the Debt Service Reserve Fund Requirement; provided, however, that if the Mortgage Loan is in default, such redemption will not occur until full FHA mortgage insurance proceeds have been received by the Trustee. \\Pursuant to Section 3.01(b) hereof, the Trustee will then redeem Bonds in

an amount equal, as nearly as practicable, to the amount of the funds transferred to the Bond Fund.

Section 3.03. Partial Redemption. (a) If a redemption of less than all the Outstanding Bonds of a particular maturity pursuant to Section 3.01 above occurs, the particular Bonds to be redeemed within each maturity shall be selected by the Trustee by lot subject to the provisions of paragraph (b) below.

(b) If a redemption of less than all the Outstanding Bonds pursuant to the provisions of Section 3.01 hereof occurs, the Trustee shall redeem a principal amount of Bonds of each maturity by lot.

(c) Notwithstanding the foregoing provisions of this Section 3.03, the Bonds shall be redeemed only in a principal amount of \$5,000 or an integral multiple thereof.

(d) Upon surrender of any Bond redeemed in part only, the Issuer shall execute and the Trustee shall authenticate and deliver to the holder thereof, without expense to such holder, a new Bond or Bonds of the same maturity and series and of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bond surrendered. The Trustee may employ such experts as it may deem necessary to advise it as to the manner of carrying out such redemption and is entitled to rely on such advice.

Section 3.04. Selection of Bonds for Redemption. For purposes of selecting Bonds for redemption, Bonds shall be deemed to be composed of \$5,000 portions and any such portion may be separately redeemed. Such Bonds shall be selected for redemption in direct order of their maturity and within each maturity, by lot. The Trustee shall promptly notify the Issuer in writing of the Bonds or portions thereof selected for redemption. The Trustee's selection of Bonds for redemption shall be final and conclusive.

Section 3.05. Notice of Redemption. Notice of redemption will be given by the Trustee to DTC, in accordance with this Section 3.05, or its nominee at the address provided to the Trustee by DTC. Such notice must (i) specify the Bonds to be redeemed, the redemption date, the redemption price and the place or places where amounts due on such redemption must be payable (which must be the principal office of the Trustee) and if less than all of the Bonds are to be redeemed, the numbers of the Bonds and the portions of Bonds to be redeemed, and (ii) state that on the redemption date, the Bonds to be redeemed will cease to bear interest.

If moneys are on deposit in the Redemption Fund to pay the redemption price of the Bonds called for redemption and premium, if any, thereon on a redemption date, Bonds or portions thereof thus called and provided for as herein specified will not bear interest after such redemption date and will not be considered to be Outstanding or to have any other rights under this Indenture other than the right to receive payment. No payment of principal will be made by the Trustee on any Bonds or portions thereof called for redemption until such Bonds or portions thereof have been delivered for payment or cancellation or the Trustee has received the

items required by Section 2.05 of this Indenture with respect to any mutilated, lost, stolen or destroyed Bonds.

If the Bonds are no longer held only by DTC and except as provided below, notice of redemption shall be given not less than 30 nor more than 45 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the registered owner of each Bond to be redeemed, at the address of such registered owner shown on the Bond Register, and a second notice of redemption shall be sent by certified mail, return receipt requested, at such address to the holder of any Bond who has not submitted his Bond to the Trustee for payment on or before the date 60 days following the date fixed for redemption of such Bond in each case stating: (i) the complete official caption of the issue of which the Bonds being redeemed are a part; (ii) the date of mailing of the notice of redemption; (iii) the date fixed for redemption; (iv) the redemption price or prices; (v) the numbers of the Bonds to be redeemed, by giving the individual certificate number of each Bond to be redeemed (or stating that all Bonds between two stated certificate numbers, both inclusive, are to be redeemed or that all of the Bonds of one or more maturities have been called for redemption); (vi) the CUSIP numbers of all Bonds being redeemed; (vii) in the case of a partial redemption of Bonds, the principal amount of each Bond being redeemed; (viii) the date of issue of the Bonds as originally issued; (ix) the rate or rates of interest borne by each Bond being redeemed; (x) the maturity date of each Bond being redeemed; (xi) the place or places where amounts due upon such redemption will be payable; (xii) the notice shall be void and of no effect in the event that the Trustee does not have sufficient money to pay the redemption price of the Bonds on the redemption date; and (xiii) the name, address, telephone number and contact person at the office of the Trustee with respect to such redemption. The notice shall require that such Bonds be surrendered at the operations office of the Trustee for redemption at the redemption price and shall state that further interest on such Bonds will not accrue from and after the redemption date. CUSIP number identification with appropriate dollar amounts for such CUSIP number also shall accompany all redemption payments, provided that no such notice of redemption shall be sent unless the Trustee has in its possession funds sufficient to pay the redemption price of the Bonds to be redeemed and that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of such Bonds.

Notice of such redemption also shall be sent by certified mail, return receipt requested, overnight delivery service or other secure means, postage prepaid, to any holder of \$1,000,000 or more in aggregate principal amount of Bonds to be redeemed, to certain municipal registered Securities Depositories (described below) which are known to the Trustee to be holding Bonds and to at least two of the national Information Services (described below) that disseminate securities redemption notices, when possible, at least five days prior to the mailing of notices required by the first paragraph above, but in any event at least 30 days, but not more than 45 days, prior to the redemption date, provided that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of such Bonds or give rise to any liability of the Trustee to the Developer, the Issuer or any holder of any of the Bonds.



Securities Depositories include The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax: (516) 227-4039 or 4190; Midwest Securities Trust Company, Capital Structures-Call Notification, 440 South LaSalle Street, Chicago, Illinois 60605, Fax: (312) 663-2343; Pacific Securities Depository Trust Company, Pacific and Company, Post Office Box 7041, San Francisco, California 94120, Fax: (415) 393-4128; Philadelphia Depository Trust Company, Reorganization Division, 1900 Market Street, Philadelphia, Pennsylvania 19103, Attention: Bond Department, Fax: (215) 496-5058; any such other securities depositories as the Issuer may designate in writing to the Trustee.

Information Services include Financial Information, Inc., "Daily Called Bond Service," 10th Floor, 30 Montgomery Street, Jersey City, New Jersey 07302, Attention: Editor; Kenny Information Services, "Called Bond Service," 28th Floor, 55 Broad Street, New York, New York 10004; Moody's Investors Service "Municipal and Government," 8th Floor, 99 Church Street, New York, New York 10007, Attention: Municipal News Reports; and Standard and Poor's Corporation "Called Bond Record," 25 Broadway, New York, New York 10004; or any other such services as the Issuer may designate in writing to the Trustee.

Failure to give notice by mailing to the holder of any Bond designated for redemption or any defect in such notice shall not affect the validity of the proceedings for the redemption of any other Bond.

Section 3.06. Cancellation. All Bonds that have been surrendered for payment or redemption, any Bonds purchased from any fund established under this Indenture, shall be cancelled and destroyed by the Trustee and shall not be reissued.

Section 3.07. Payment Upon Redemption. Prior to each redemption date, the Trustee shall make provisions for the payment of Bonds to be redeemed on such date by setting aside and holding in trust an amount from the Bond Fund or otherwise received by the Trustee. Upon presentation and surrender of any such Bond at the operations office of the Trustee on or after the date fixed for redemption, the Trustee shall pay the principal of and premium, if any, on such Bond as of the applicable Regular Record Date; otherwise, interest shall be payable to the owner thereof as of the date fixed for redemption.

Section 3.08. Effect of Redemption. Notice of redemption having been given as provided in Section 3.05 hereof, the Bonds or portions thereof designated for redemption shall become due and payable on the date fixed for redemption and, unless the Issuer defaults in the payment of the principal thereof and premium, if any, thereon, or the accrued interest due with respect thereto, such Bond or portions thereof shall cease to bear interest from and after the date fixed for redemption whether or not such Bonds are presented and surrendered for payment on such date. If any Bond or portion thereof called for redemption is not so paid upon presentation and surrender thereof for redemption, such Bond or portion thereof shall continue to bear interest at the rate set forth thereon until paid or until due provision is made for the payment of same.

[End of Article III]

## ARTICLE IV

### FUNDS; INVESTMENTS

Section 4.01. Pledge and Assignment. Subject only to the provisions of this Indenture permitting the application thereof for or to the purposes and on the terms and conditions set forth herein, there are hereby pledged to secure the payment of the principal of, premium, if any, and interest on the Bonds in accordance with their terms and the provisions of this Indenture, all Net Revenues, and any other amounts held in any fund or account (except the Rebate Fund) established pursuant to this Indenture and all of the right, title and interest of the Issuer in each FHA debenture. Said pledge shall constitute a lien on and security interest in such assets and shall attach, be perfected and be valid and binding from and after delivery by the Trustee of the Bonds, without any physical delivery thereof or further act.

Section 4.02. Application of Bond Proceeds. From the proceeds of the Bonds and other moneys received from the Developer, the Trustee shall deposit (i) \\\$[ ] to the Bond Fund to pay the accrued interest on the Series B Bonds, (ii) \\\$380,000 to the Debt Service Reserve Fund representing the Debt Service Reserve Fund Requirement, (iii) \\\$246,750 to the Cost of Issuance Fund to be used in accordance with Section 4.11 hereof and (iv) \\\$3,829,352.50 with the Escrow Agent for deposit under the Escrow Agreement to pay the outstanding principal of, premium, if any, and accrued interest, if any, on the \\1983 Bonds.

Section 4.03. Establishment of Funds. The following funds shall be established and maintained by the Trustee under this Indenture in trust for the benefit of the Owners of the Bonds (except that the Rebate Fund shall be in trust for the benefit of the United States of America):

- (a) the Bond Fund;
- (b) the Expense Fund;
- (c) the Debt Service Reserve Fund;
- (d) the Redemption Fund;
- (e) Cost of Issuance Fund; and
- (f) the Rebate Fund.

Except as provided in Section 4.01 hereof and except for prepayments of the Mortgage Note which shall be deposited into the Redemption Fund, all Net Revenues as received from the Mortgage Servicer shall be promptly deposited by the Trustee as set forth in Section 4.04 hereof.

Section 4.04. Application of Net Revenues. Upon receipt by the Trustee, all prepayments of the Mortgage Note shall be deposited to the Redemption Fund and used in

accordance with Section 4.09 hereof, and all other Net Revenues shall be distributed in the following order of priority:

(a) Into the Bond Fund to pay Debt Service on the Bonds accruing on or before the next February 1 or August 1 as applicable in accordance with Section 4.06;

(b) Into the Expense Fund, the amount, if any, needed to pay Qualified Expenses;

(c) So long as the Trustee has not received FHA debentures, into the Debt Service Reserve Fund, an amount required to maintain the Debt Service Reserve Fund Requirement; and

(d) Commencing February 1, \1994, and each February 1 and August 1 thereafter, into the Redemption Fund, the Excess Revenues.

Section 4.05. Application of Expense Fund. All amounts in the Expense Fund shall be used and withdrawn by the Trustee solely for the purpose of paying Qualified Expenses and to redeem Bonds as directed in Section 4.09. The Trustee shall deposit all investment earnings received from the investment of moneys in the Expense Fund into the Bond Fund.

Section 4.06. Bond Fund. (a) The Trustee shall deposit into the Bond Fund the amounts required by Sections 4.04, 4.07 and 4.08, and any other amounts received by the Trustee that are subject to the lien and pledge of the Indenture and not otherwise deposited. All moneys at any time deposited into the Bond Fund shall be held by the Trustee in trust for the benefit of the Owners at any time of the Bonds, and the Issuer shall have no beneficial right or interest in any of such moneys, except as provided in this Indenture.

(b) All amounts in the Bond Fund shall be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity pursuant to this Indenture), and paying the principal of the Bonds when due and payable.

(c) The Trustee shall, if and to the extent practicable, purchase Bonds for cancellation upon request of the Developer at such time, in such manner and at such price as may be specified by the Developer. The Trustee may so purchase Bonds with any moneys then held by the Trustee and available, in accordance with the terms hereof, for the redemption or purchase of Bonds in excess of any amount set aside for payment of Bonds called for redemption; provided, that any limitations or restrictions on such redemption or purchase contained in the Loan Agreement or this Indenture shall be complied with. The expenses of such purchase shall be deemed an expense of the Trustee to be reimbursed pursuant to Section 7.05 hereof. All Bonds so purchased by the Trustee shall be cancelled as provided in Section 3.06. Not less than 30 nor more than 45 days before the date of each special mandatory redemption, the Trustee shall call for redemption Bonds in an aggregate principal amount equal to such special mandatory redemption, reduced by the principal amount of Bonds purchased

pursuant to the foregoing provisions of this paragraph, and on the date such scheduled mandatory redemption is due the Trustee shall apply the money set aside therefor in the Bond Fund to the payment of the redemption price of the Bonds so called for redemption.

(d) All income from the investment of moneys in the Bond Fund shall be retained in the Bond Fund.

(e) If the amount in the Bond Fund is insufficient to pay principal of or interest on the Bonds when due, in accordance with Section 4.07 hereof, the Trustee shall transfer from the Debt Service Reserve Fund to the Bond Fund the amount of such deficiency.

**Section 4.07. Debt Service Reserve Fund.** On the Closing Date, the Issuer shall deposit with the Trustee an amount equal to \\\$380,000 which the Trustee shall deposit into the Debt Service Reserve Fund. Amounts shall be maintained within the Debt Service Reserve Fund at all times equal to or not less than the Debt Service Reserve Fund Requirement. The Trustee may transfer amounts in the Debt Service Reserve Fund to the Bond Fund to pay the principal of and interest on the Bonds only after written notice of default under the Mortgage Note has been given to HUD pursuant to Section 6.06(b) hereof. If moneys in the Debt Service Reserve Fund are used to pay any deficiency in the payment of the principal of or interest on the Bonds, the Trustee shall provide written notice thereof to the Developer and the Developer shall, pursuant to Section 3.1(b) of the Loan Agreement, be required to replenish the Debt Service Reserve Fund with the amount required to reinstate the balance of such fund to the amount of the Debt Service Reserve Requirement. At such time that all the moneys in the Debt Service Reserve Fund are invested in Investment Securities, the Debt Service Reserve Fund shall be valued monthly at par on the date of such valuation, and if the amount of moneys in the Debt Service Reserve Fund shall be less than the Debt Service Reserve Fund Requirement, the Trustee shall so notify the Issuer and the Developer. No later than 60 days after the date on which the Trustee provides notice to the Issuer and the Developer that the amount of moneys in the Debt Service Reserve Fund is less than the Debt Service Reserve Fund Requirement, the Developer may deposit sufficient moneys to ensure that the amount of moneys in the Debt Service Reserve Fund is not less than the Debt Service Reserve Fund Requirement.

In connection with any proposed partial redemption of Bonds, the Trustee shall compute the reduction in the Debt Service Reserve Fund Requirement which will result from such redemption and transfer any amount on deposit in the Debt Service Reserve Fund which will exceed the Debt Service Reserve Fund Requirement following such redemption into the Redemption Fund to be used in connection with such redemption; provided, however, that if the Loan is in default, such redemption pursuant to Section 3.01(d) will not occur until full FHA mortgage insurance proceeds have been received.

The Trustee shall deposit all investment earnings received from the investment of moneys in the Debt Service Reserve Fund into the Bond Fund; provided, however, that any earnings in excess of the average monthly yield on the Certificates shall be deposited into the Rebate Fund. Moneys held in the Debt Service Reserve Fund in excess of \\\$372,000 shall be invested in Investment Securities described in clause (7) of the definition thereof.

The moneys in the Debt Service Reserve Fund shall be used to pay the final principal payment due on the Series A Bonds.

Section 4.08. Investment of Moneys in Funds. Moneys in all funds established under this Indenture shall be invested in the Investment Agreement to the maximum extent permitted as provided in this Section 4.08 or, at the direction of the Developer, in Investment Securities paying interest and maturing or having a right to tender on seven days' notice not later than the dates on which it is estimated that such moneys will be required by the Trustee. Investments in all funds and accounts may be commingled for purposes of making investments, and all gains or losses shall be allocated pro rata. Moneys in all funds and accounts shall be invested under the Investment Agreement so long as the Investment Agreement is in effect. Any moneys in the funds and accounts established under this Indenture which are not the subject of the Investment Agreement shall be invested in Investment Securities maturing on a date which is the earlier of 90 days from the date such investment is made or the date such funds are needed.

All interest and other profit derived from the investment of funds pursuant to this Section 4.08 shall be deposited in the manner described in Sections 4.06, 4.07, 4.09 and 4.11, respectively.

Section 4.09. Redemption Fund. (a) Excess Revenues deposited into the Redemption Fund pursuant to Section 4.04(d) hereof shall be withdrawn to redeem Bonds in accordance with Section 3.01(b).

(b) Whenever amounts held in the Bond Fund, the Debt Service Reserve Fund, the Expense Fund and the Redemption Fund are sufficient to redeem, pursuant to Section 3.01(b) hereof, all Outstanding Bonds on the next date for which notice of redemption may be given pursuant to Section 3.05 and to pay all Qualified Expenses, all such amounts, net of Qualified Expenses, shall be transferred to the Redemption Fund and all such Investment Securities shall be liquidated to the extent necessary to provide moneys sufficient for such redemption. The Trustee shall deposit all investment earnings derived from amount deposited into the Redemption Fund into the Bond Fund.

Section 4.10. Rebate Fund. The Custodian shall notify the Trustee of the average interest rate on the Certificates by 2:00 p.m. on each Payment Date. The Trustee shall calculate the difference between the average interest rate on the Certificates and the actual interest paid on amounts held in the Debt Service Reserve Fund, and shall deposit such excess in the Rebate Fund in accordance with Section 4.07 hereof. The Rebate Fund shall be administered by the Trustee in accordance with the provisions of this Section 4.10 and the Tax Regulatory Agreement.

The Trustee shall engage for the account and at the expense of the Developer the Rebate Consultant to make the calculation(s) required by the Tax Regulatory Agreement on each Computation Date (as defined in the Tax Regulatory Agreement). The Trustee is required to make deposits from investment earnings held in the Bond Fund and attributable to the Debt Service Reserve Fund (other than moneys required to be invested under clause (7) of the

definition of Investment Securities pursuant to Section 4.07 hereof) and then from deposits made to the Trustee by the Depositor, on behalf of the Developer to the Rebate Fund and disbursements from the Rebate Fund in accordance with the Tax Regulatory Agreement and to invest the Rebate Fund pursuant to said Tax Regulatory Agreement and deposit income from such investments immediately upon receipt thereof in the Rebate Fund. All interest and other profit derived from such investments shall be retained within the Rebate Fund.

The Tax Regulatory Agreement shall be amended from time to time to accord with any regulations promulgated under or any amendment to Section 148(f) of the Code that affects the method of calculation of any rebate required to be paid to the United States, with the written approval of Bond Counsel. If such regulations under or amendments to Section 148(f) of the Code operate to void the rebate requirements contained therein, any and all provisions of this Indenture and the Tax Regulatory Agreement requiring amounts to be rebated to the United States shall cease to apply; provided, however, there is first delivered to the Trustee a written direction from the Issuer and an opinion of Bond Counsel to the effect that the discontinuance of the rebate payment by the Trustee on behalf of the Issuer to the United States will not adversely affect the exclusion of interest on the Series A Bonds from gross income for federal income tax purposes.

The Trustee may, but shall not be obligated to, advance funds to pay for the calculations required hereinabove. If the Trustee advances any funds hereunder, the Trustee shall be repaid at a rate equal to its then current prime lending rate plus one percent. The Trustee shall have no responsibility for the accuracy or completeness of such calculations or for any matter relating to arbitrage rebate other than selection, in good faith, of a certified public accountant or other professional and the Trustee's duty to follow the Tax Regulatory Agreement.

Section 4.11. Costs of Issuance Fund. On the Closing Date, the Issuer shall deposit with the Trustee an amount equal to \\ \$246,750.00 which the Trustee shall deposit into the Costs of Issuance Fund. Upon receipt, the Trustee shall distribute all moneys deposited into the Cost of Issuance Fund for the purpose of paying all costs related to the issuance and sale of the Bonds in accordance with the written instructions set forth in Appendix A hereto. Any amounts remaining in the Costs of Issuance Fund 30 days after the Closing Date shall be transferred to the Developer.

Section 4.12. Nonpresentment of Bonds. In the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof or otherwise, if funds sufficient to pay such Bonds shall have been made available to the Trustee for the benefit of the holder thereof and shall have remained unclaimed for five years after such principal or interest has become due and payable, to the extent permitted by law and subject to receipt of indemnification satisfactory to the Trustee, such funds shall be paid to the Developer; and all liability of the Issuer and the Trustee to the holder thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged; provided, however, that the Trustee, before being required to make any such payment to the Developer, shall cause to be published once in a financial newspaper or journal of general national circulation, notice that such money remains unclaimed and that, after a date specified



therein, which shall not be less than 30 days nor more than 90 days from the date of such publication, any unclaimed balance of such money then remaining will be paid to the Developer. The cost of such publication shall be paid from the unclaimed funds so held by the Trustee and otherwise by the Developer. The obligation of the Trustee under this Section to pay any such funds to the Developer shall be subject to any provisions of law applicable to the Trustee or to such funds providing other requirements for disposition of unclaimed property.

Section 4.13. Final Balances. Provided the Trustee has not received notice from the Developer that the Collateral Agreement has been terminated, upon final payment of all principal of, premium, if any, and interest on the Bonds, and upon satisfaction of all claims against the Issuer and the Trustee hereunder, including the payment of all fees, charges and expenses of the Issuer, the Trustee and the Rebate Consultant that are properly due and payable hereunder, and any other fees and charges that are properly payable under Section 4.05 hereof, or upon the making of adequate provision for the payment of such amounts, as permitted hereby, all money remaining in all funds held under this Indenture (other than the Rebate Fund) shall be paid to the Depositor or following the termination of the Collateral Agreement, such amounts will be paid to the Developer.

Section 4.14. Procedure When Funds Are Sufficient to Pay All Bonds. (a) If at any time the amounts held by the Trustee in the funds established under this Article IV are sufficient to pay all principal of, redemption premium, if any, and interest on all Bonds then Outstanding on the next regular payment date thereof, together with any amounts due the Trustee, the Trustee shall notify the Issuer, the Mortgage Servicer and the Developer to that effect and thereafter the Trustee shall apply, subject to any applicable FHA requirements, the amounts in such funds first to the payment or prepayment of such principal and interest, and second, to the payment of any amounts due to itself, and the Trustee shall credit such payments to prepayment of the Mortgage Note and the Mortgage, in accordance with the prepayment provisions of the Mortgage Note and Mortgage, and the redemption provisions of the Bonds.

(b) Upon payment of the principal of, premium, if any, and interest on all Bonds Outstanding, together with any amounts due to the Trustee, the Trustee will cancel the Mortgage Note and deliver the same to the Developer and shall execute such instruments and take such other action as the Developer may request to satisfy and discharge the Mortgage.

[End of Article IV]

## ARTICLE V

### GENERAL COVENANTS AND REPRESENTATIONS

Section 5.01. Payment of Principal of and Interest on Bonds. The Issuer shall promptly pay or cause to be paid the principal of, premium, if any, and the interest on, every Bond issued hereunder according to the terms thereof, but shall be required to make such payment or cause such payment to be made only out of revenues available therefor under this Indenture.

Section 5.02. Instruments of Further Assurance. The Trustee shall maintain possession of and defend the Issuer's title to the Loan Agreement and the Loan for the benefit of the holders of the Bonds against the claims and demands of all Persons whomsoever, and the Issuer shall execute and the Trustee shall do, execute, acknowledge and deliver, such indentures supplemental hereto, and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Trustee all its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds paid solely from the Trust Estate. Any and all interest in property hereafter acquired that is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Issuer or the Trustee, become and be subject to the lien of this Indenture as fully and completely as though specifically described herein, but nothing contained in this sentence shall be deemed to modify or change the obligations of the Issuer under this Section.

Section 5.03. Corporate Existence and Maintenance of Properties. The Issuer shall use its best efforts to maintain and renew all its rights, powers, and privileges under the Act, and all rights, powers and privileges of the Commission under the Act, for so long as any Bonds are Outstanding, and shall comply with all valid and applicable laws, acts, rules, regulations, permits, orders, requirements and directions of any legislative, executive, administrative or judicial body.

Section 5.04. Recordation and Filing. The Trustee will cause financing statements with respect to the Trust Estate to be at all times filed in such manner and in such places, if any, as may be required by law in order to fully preserve and protect the rights of the Trustee hereunder and to perfect the security interest created by this Indenture in the Trust Estate. To the extent possible under applicable law, as in effect in the jurisdiction in which the Trust Estate is located, the Developer shall maintain the priority of the security interest herein created in the Trust Estate as a first lien thereon, and warrant, protect, preserve and defend its interest in the Trust Estate and the security interest of the Trustee therein and all rights of the Trustee under this Indenture against all actions, proceedings, claims and demands of all Persons, all paid for solely from the Trust Estate.

Section 5.05. Priority of Lien; No Modification of Security; No Additional Indebtedness. The Issuer shall duly observe and comply with all valid requirements of any municipal or governmental authority relative to any part of the financing contemplated hereby, and shall not

create or suffer to be created any lien or charge upon the Trust Estate hereunder prior to or on a parity with or inferior to the pledge, security interest and lien created hereby for the payment of the principal of, premium, if any, and interest on the Bonds.

The Issuer shall not, without the prior written consent of the Trustee, alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement that relates to or affects the security for the Bonds in accordance with the standards set forth in the Indenture.

Section 5.06. Reports and Other Notices. (a) The Trustee shall furnish, at a requesting Bondholder's expense, to any Bondholder who requests copies thereof and furnishes an address to which such reports and statements are to be sent, copies of (i) any reports furnished to the Trustee with regard to the Project (including, but not limited to, the most recent annual financial and management audits with respect to the Project and payment status reports with respect to the Mortgage Note) and (ii) annual statements of the Trustee with regard to fund balances, (b) The Trustee shall furnish at the expense of the Custodian and Remarketing Agent annual statements with regard to fund balances to the Custodian and Remarketing Agent and (c) The Trustee shall also furnish to the Rating Agency notice of any transfer of funds by the Trustee from the Debt Service Reserve Fund to the Bond Fund as a result of a default on the Loan and such additional information as is reasonably requested in order to maintain the rating on the Bonds, and shall provide a copy of such information to any Bondholder who owns \$1,000,000 or more in aggregate principal amount of Bonds and to any other Bondholder who requests such information.

Section 5.07. Tax Covenants. The Issuer covenants with the holders of the Series A Bonds that, notwithstanding any other provisions hereof or of any other instrument, and for so long as the Series A Bonds remain Outstanding, it will not use money on deposit in the funds and accounts created hereunder, whether or not such money was derived from the proceeds of the sale of the Bonds or from any other source, in any manner which would cause the Series A Bonds to be "arbitrage bonds" under Section 148 of the Code and the Regulations thereunder or otherwise cause or permit the interest on the Series A Bonds to become included in gross income for federal income tax purposes under the Code, and the Trustee agrees it will invest funds held under the Indenture in accordance with the terms of this Indenture and the Tax Regulatory Agreement. This covenant shall extend, throughout the term of the Series A Bonds, to all funds created hereunder and all money on deposit to the credit of any such fund.

The Issuer and the Trustee each covenant for the benefit of the holders of the Series A Bonds to honor their respective obligations hereunder relating to the tax-exempt status of the Series A Bonds.

Section 5.08. Application of Proceeds of Insurance. (a) Paragraph 7 of the Mortgage provides that amounts paid by any insurance company pursuant to a contract of insurance shall be paid to the mortgagee under the Mortgage, and, at its option, may be applied to the debt or released for the repairing or rebuilding of the Project. The Trustee (as mortgagee under the Mortgage) shall recover and hold all proceeds of hazard insurance payable to the Trustee; provided that the Developer shall have the sole right to settle any insurance claim. Pending the

application of such insurance proceeds pursuant to paragraph (b) below, such insurance proceeds shall be held by the Trustee (as mortgagee under the Mortgage) in a separate account (the "Insurance Account"). Any amounts deposited into the Insurance Account shall be invested in investments described in clause (5) of the definition of Investment Securities. No such amounts may be so applied or released without the prior approval of FHA. In the event of any damage to any property covered by insurance as required by Section 3.5 of the Loan Agreement, the Loan Agreement provides that the Developer shall immediately notify the Trustee and the Mortgage Servicer and prepare an estimate of the costs of repairing or replacing the damaged property and prepare plans and specifications therefor. If the fire and extended coverage insurance proceeds exceed \$25,000, the estimate of costs of repair or replacement and a copy of any such plans and specifications shall be filed with the Trustee, the Mortgage Servicer and FHA.

(b) If the insurance proceeds are to be applied to the repair or replacement of the property damaged or destroyed as determined by Section 5.08(d) hereof, and if such proceeds exceed \$50,000, the insurance proceeds and any income earned in the investment thereof shall be disbursed by the Trustee from the Insurance Account in accordance with the requisition procedures established in Section 4(A) under the Servicing Agreement. If such insurance proceeds are \$50,000 or less, such proceeds shall, at the request of the Developer, be paid to or upon the order of the Developer, which shall keep them separate from all other funds and use them only to pay the costs of repair or replacement of the property damaged or destroyed. The Loan Agreement provides that the Developer shall commence and diligently prosecute, or cause to be commenced and diligently prosecuted, the repair or replacement of the property damaged or destroyed in accordance with any plans and specifications approved by an independent architect and shall pay any amounts required for the completion of such repair or replacement if the insurance proceeds (including any income earned on the investment thereof) are insufficient therefor. If, following the completion of such repair or replacement, any moneys remain in the Insurance Account, such moneys shall, subject to any applicable FHA requirements, be paid to the Developer.

(c) If the insurance proceeds are to be credited to prepayment of the Mortgage Note and Mortgage, such proceeds and any income earned on the investment thereof shall then become part of the Trust Estate and shall be deposited in the Redemption Fund and applied to the redemption of Bonds pursuant to Section 3.01(c) hereof.

(d) If, within 90 days from the occurrence of such damage or destruction, the Developer and the Trustee agree in writing that the efficient utilization of the Project has not been impaired to such extent that the ability of the Developer, taking into account all financial resources of the Developer, to make the payments required under the Mortgage Note, Mortgage and Regulatory Agreement will have been materially adversely affected prior to the completion of the replacement or restoration of such part of the Project so damaged or destroyed, the proceeds of insurance received by reason of such occurrence (after deducting any reasonable expenses incurred by the Trustee or the Developer in collecting the same) shall, subject to any applicable FHA requirements, be applied to the repair or replacement of the property damaged or destroyed, or at the written option of the Developer, shall be credited as a prepayment of the

last installments of principal becoming due under the Mortgage Note, shall be deposited in the Redemption Fund and applied to the redemption of Bonds. If no such agreement shall be reached within such 90-day period, all respective insurance proceeds (after such deduction) shall, subject to any applicable FHA requirements, be credited to prepayment of the last installments of principal becoming due under the Mortgage Note and Mortgage.

Section 5.09. Mortgage and Regulatory Agreement Controlling. Notwithstanding any other provision of this Indenture, the Trustee and the Issuer agree for themselves, their successors and assigns, that should any conflict arise between this Indenture and the Mortgage or the Regulatory Agreement, the Mortgage or the Regulatory Agreement, as the case may be, shall be controlling.

Section 5.10. Application of Proceeds of Condemnation Compensation. (a) Paragraph 8 of the Mortgage provides that all proceeds of condemnation shall be assigned to the mortgagee under the Mortgage, to the extent of any indebtedness that remains unpaid. The Trustee (as mortgagee under the Mortgage) shall recover and hold all such proceeds of condemnation. Pending the application of such condemnation proceeds pursuant to paragraph (b) below, such condemnation proceeds shall be held by the Trustee (as mortgagee under the Mortgage) in a separate account (the "Condemnation Account"). No such amounts may be applied or released without the prior written approval of FHA. Upon the institution of any condemnation proceedings with respect to the Project, or any portion thereof, the Loan Agreement provides that the Developer shall immediately notify the Trustee and the Mortgage Servicer. The Developer shall have the sole right to settle any condemnation award.

(b) The Trustee as (mortgagee under the Mortgage) shall determine whether to apply the proceeds of condemnation to the prepayment of the last installments of principal becoming due under the Mortgage Note and Mortgage, and if such proceeds are applied to the prepayment of the Mortgage Note and Mortgage, such proceeds and any income earned on the investment thereof less the reasonable expenses of the Trustee and the Developer in collecting the same shall then become part of the Trust Estate, and shall be deposited in the Bond Fund and applied to the redemption of Bonds pursuant to Section 3.01(c) herein. Any such proceeds received from a taking of less than substantially all of the Project shall be applied as follows:

(1) if no part of the improvements included in the Project is taken or damaged, and the Trustee (as mortgagee under the Mortgage) in its discretion determines that the efficient utilization of the Project is not impaired by such taking, then all of the condemnation proceeds (after deducting the reasonable expenses of the Trustee and the Developer in collecting the same), and any income earned on the investment thereof, shall, subject to any applicable FHA requirements, be paid to the Developer;

(2) if any part of such improvements is taken or damaged, and if the Trustee (as mortgagee under the Mortgage) in its discretion determines that the repair, rebuilding, restoration, or rearrangement of the Project is not possible so as to restore the operational condition of the Project to substantially the condition existing immediately preceding such condemnation, then all of the condemnation proceeds (less the reasonable

expenses incurred by the Trustee or the Developer in collecting the same) and any income earned on the investment thereof, shall, subject to any applicable FHA requirements, be credited to the prepayment of the last installments of principal becoming due under the Mortgage Note and Mortgage, shall become part of the Trustee Estate, and shall be deposited into the Redemption Fund and applied to the redemption of Bonds as described in Section 3.01(c) hereof; and

(3) if any part of such improvements is taken or damaged, and if the Trustee (as mortgagee under the Mortgage) in its discretion determines that the repair, rebuilding, restoration or rearrangement of the Project is possible, then all of the condemnation proceeds (less the reasonable expenses incurred by the Trustee or the Developer in collecting the same) and any income earned on the investment thereof, shall, subject to any applicable FHA requirements, be disbursed to the Developer for the repair, rebuilding, restoration or rearrangement of the Project, insofar as may be possible, so as to restore the operational condition thereof to that existing immediately preceding such condemnation, such net condemnation proceeds to be disbursed by the Trustee from the Condemnation Account in accordance with the requisition procedure established under Section 4(A) of the Servicing Agreement; and in such event, the Loan Agreement provides that the Developer shall commence and diligently prosecute, or cause to be commenced and diligently prosecuted, such repair, rebuilding, restoration or rearrangement of the Project, and shall pay any amounts required for the completion thereof if the condemnation proceeds (including any income earned on the investment thereof) are insufficient therefor; and if, following the completion of such repair, rebuilding, restoration or rearrangement, any moneys remain in the Condemnation Account, such moneys shall, subject to any applicable FHA requirements, be paid to the Developer.

Section 5.11. Extension of Time for Payment of Interest, Etc. Prohibited. The Issuer shall not directly or indirectly extend or assent to the extension of the time for payment of any interest appertaining to, or claim for interest on, any of the Bonds and shall not directly or indirectly be a party to or approve any arrangement therefore by purchasing or funding or in any manner keeping alive any such claim for interest; and no claim for interest which in any way at or after maturity has been transferred or pledged apart from the Bond to which it relates or which shall in any manner have been kept alive after maturity by extension or by purchase thereof by or on behalf of the Issuer shall be entitled, in case of a default hereunder, to any benefit or security under this Trust Indenture except after the prior payment in full or the principal of all Bonds and of all coupons and claims for interest appertaining thereto not so transferred, pledged, kept alive or extended.

[End of Article V]



## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

Section 6.01. Events of Default. Each of the following shall be an "event of default" under this Indenture:

- (a) default in the due and punctual payment of any interest on any Bond; or
- (b) default in the due and punctual payment of the principal of or premium, if any, on any Bond whether at the stated maturity thereof, or on proceedings for redemption thereof, or on the maturity thereof by declaration; or
- (c) if the Issuer files a petition under Chapter IX of the Bankruptcy Code; or
- (d) default, and the continuation thereof for a period of 30 days following notice to the Trustee, in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer in this Indenture or in the Bonds after written notice to the Issuer from the Trustee or the registered owners of at least 25 % of the Bonds at such time specifying such default and requiring the same to be remedied.

Section 6.02. Acceleration; Other Remedies. Upon the occurrence of an event of default as provided in Section 6.01(a) or (b), the Trustee may, and upon the written request of the holders of not less than 25 % of the Bonds Outstanding must, by notice in writing delivered to the Issuer, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. There shall be no acceleration upon the occurrence of an event of default as described in Section 6.01(c) or (d) hereof.

If at any time after the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Issuer or the Developer shall pay to or deposit with the Trustee a sum sufficient to pay all principal of the Bonds then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) upon all the Bonds then due, with interest at the rate borne by the Bonds on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable expenses of the Trustee shall have been made good or cured or adequate provisions shall have been made therefor, and all other defaults hereunder have been made good or cured or waived in writing by owners of a 100% of the Bonds, then and in every case, the Trustee on behalf of the holders of all the Bonds shall rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the happening and continuance of an event of default, the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the holders of all Bonds, may also proceed to protect and enforce any rights of the Trustee and, to the full extent that the holders of such Bonds themselves might do, the rights of such Bondholders under the laws of the State or under this Indenture by such of the following remedies as the Trustee shall deem most effectual to protect and enforce such rights.

(1) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, premium, if any, or interest on the Bonds then Outstanding, or for the specific performance of any covenant or agreement contained herein or in the Loan Agreement, the Mortgage Note, or the Mortgage, or to require the Issuer to carry out any other covenant or agreement with Bondholders and to perform its duties under the Act;

(2) by pursuing any available remedies under the Loan Agreement, the Mortgage Note or the Mortgage;

(3) in connection with an event of default under Section 6.01(a) or (b), by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

(4) by action or suit in equity, to enjoin any acts or things that may be unlawful or in violation of the rights of the Holders of Bonds.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or under the Loan Agreement, the Mortgage Note or the Mortgage, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default or event of default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any default or event of default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

Section 6.03. Rights of Bondholders. If any event of default shall have occurred and if requested in writing so to do by the owners of not less than 25% of the Bonds Outstanding with respect to which there is a default, and if indemnified as provided herein, the Trustee shall be obliged to exercise one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interest of the Bondholders. Subject to the provisions of Section 6.07, the holders of a majority of the Bonds shall have the right at any time, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver

or any other proceedings hereunder, in accordance with the provisions of law and of this Indenture.

Section 6.04. Waiver by Issuer. Upon the occurrence of an event of default, to the extent that such right may then lawfully be waived, neither the Issuer nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereinafter in force, in order to prevent or hinder the enforcement of the Indenture; and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisement and redemption to which it may be entitled under the laws of the State and the United States.

Section 6.05. Application of Money. Any money received by the Trustee in the event of a default pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in the case of the distribution of such money on account of principal or premium, if any, or interest, upon presentation of Bonds, and notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

(a) to the payment of all amounts then due on the Bonds for principal, premium, if any, and interest, in respect of which or for the benefit of which money has been collected (other than Bonds which have matured or otherwise become payable prior to such event of default and money for the payment of which is held in the Bond Fund), ratably without preference or priority of any kind, according to the amounts due and payable on such Bonds, for principal, premium, if any, and interest respectively; and

(b) to the payment of all amounts due the Trustee under Section 7.05.

Section 6.06. Remedies Under Mortgage and FHA Mortgage Insurance. (a) If the Developer fails to make any payment required under the Mortgage Note or Mortgage and such failure continues for a period of 30 days, or if the unpaid principal balance of the Mortgage Note shall have been accelerated as a result of any nonmonetary default by the Developer under the terms of the Mortgage; or if FHA shall have requested and the Trustee shall have declared, such an acceleration upon a default by the Developer under the Regulatory Agreement, then the Trustee shall immediately give written notice of such default to the Holders of all Bonds in the same manner prescribed in Article III hereof for notices of redemption.

(b) Subject to the foregoing, upon such payment default or performance default, the Trustee shall:

(i) immediately upon becoming entitled to do so, and not later than 45 days after a failure by the Developer to make any payment under the Mortgage Note:

(A) Subject to Subsection (ii) below, give written notice of Intention and Election to Assign (HUD Form) in writing to HUD Central (with a copy to the applicable HUD area office and Rating Agency) which notice shall:

(1) state that the Mortgage Loan was funded in part with the proceeds of tax-exempt bonds rated by the Rating Agency entitled to priority processing and expedited processing procedures by FHA;

(2) provide a schedule of the maximum payments of Debt Service with respect to the Bonds indicating funds available to make such payments; and

(3) request forms and instructions relating to assignment of the Mortgage and shall attach to such request a copy of the letter from HUD to Standard & Poor's Corporation dated June 23, 1987;

(B) give notice, in writing, to the applicable HUD area office of the occurrence of the default entitling the Trustee to claim FHA mortgage insurance benefits.

(ii) within five days of receiving the forms and instructions described in (i)(A)(3) above, the Trustee shall submit such documentation as required by HUD to HUD's Office of General Counsel;

(iii) as soon as practicable after filing its election to assign with FHA, but not later than 30 days thereafter (or any other period required by FHA), the Trustee shall:

(A) assign the Mortgage, the Mortgage Note, and such other necessary documents as shall be required by FHA directly to FHA, giving all required notices,

(B) record the assignment of the Mortgage Note to FHA in accordance with instruction from HUD Central, and

(C) submit to HUD Central the Application (FHA Form) for mortgage insurance benefits and request payment of the mortgage insurance benefits in cash;

(iv) as soon as possible, but in no event later than 30 days after recordation and assignment of the Mortgage, submit fiscal documentation required by HUD's Office of Finance and Accounting and complete and submit all outstanding legal documents.

(c) Subject to Subsection (a) above, the Trustee shall not consent to any adjustments or revisions of the terms of the Mortgage Loan or the contract of FHA Mortgage Insurance, or take, or fail to take, any action in the event of a default, which would cause there to be insufficient money available for the scheduled payment of principal and interest on the Bonds, or for the payment of the Trustee's Fees.

(d) In the event that FHA shall make payment of a claim for FHA mortgage insurance in cash, whether in whole or in part, the Trustee shall apply such cash proceeds as provided in Section 3.01(d) hereof.

(e) In the event that FHA shall make payment of a claim for FHA mortgage insurance in FHA debentures, whether in whole or in part, the Trustee shall apply such debentures as provided in Section 3.01(e) hereof, and give notice to the holders of all Bonds Outstanding in the same manner prescribed in Article III hereof for notices of redemption that the Trustee has received such FHA debentures. Except as provided herein, the Trustee shall hold such FHA debentures to their maturity, or until the principal of and interest on all Bonds Outstanding have been paid, whichever is the earlier, and shall apply the principal thereof to the payment of the principal of the Bonds Outstanding; provided, however, that at the written request of the Holders of one hundred percent (100%) in aggregate principal amount of the Bonds Outstanding, or (in the absence of such Bondholder request), at the request of the Developer, that the proceeds of the sale of the FHA debentures and all other investments of amounts deposited in the funds and accounts established hereunder would produce sufficient funds together with all immediately available funds held by the Trustee hereunder to pay the principal of and interest on all Bonds Outstanding, the Trustee shall sell such debentures and other investments, deposit the proceeds so obtained and such other immediately available funds in the Redemption Fund and apply the same as provided in Section hereof.

**Section 6.07. Application of FHA Mortgage Insurance Benefits.** (a) Moneys in the Bond Fund and Debt Service Reserve Fund shall be deemed held for the benefit of the holders of the Bonds, and shall not be subject to such rights of FHA.

(b) Upon receipt of the final payment of mortgage insurance proceeds from FHA, the Trustee shall calculate the "Funds Available for Extraordinary Redemption," being the sum of: (i) all mortgage insurance proceeds paid in cash, including accrued interest on FHA debentures to their date of delivery ("Cash Proceeds"); (ii) all uninvested moneys held in all funds and accounts established under this Indenture; and (iii) the amount which could be realized from the sale of all investments (not including FHA debentures) deposited to the credit of all funds and accounts established under this Indenture ("Investments on Hand"). In the event that all mortgage insurance proceeds are paid by FHA in cash and the Funds Available for Extraordinary Redemption are sufficient to redeem all Bonds Outstanding pursuant to extraordinary redemption on the first practicable date such redemption can be made in accordance with Article III hereof, the Trustee shall sell all Investments on Hand and deposit the proceeds of sale, together with all Cash Proceeds and Cash on Hand in the Redemption Fund and apply such amounts to the Extraordinary Redemption of Bonds. In the event that mortgage insurance benefits are paid by FHA in part in FHA debentures and in part in cash, and the Funds Available for Extraordinary Redemption (if applied on the first practicable date to Extraordinary Redemption of Bonds) and the income and principal on the FHA debentures would be sufficient to pay when due the interest on, and to pay at or prior to maturity the principal of, all Bonds Outstanding, then the Trustee shall sell all Investments on Hand and deposit the proceeds of sale, together with all Cash Proceeds and Cash on Hand in the Redemption Fund and apply such amounts to the Extraordinary Redemption of Bonds.

(c) If the mortgage insurance proceeds, Cash on Hand and the proceeds which could be realized from the sale of Investments on Hand are not sufficient to pay the principal or redemption price of and interest on all Bonds Outstanding in the manner described in paragraph (b) above, then the FHA debentures shall be sold and payments thereon shall be deposited into the Bond Fund when received.

Section 6.08. No Obligation of FHA. No provision of this Indenture shall impose any obligation upon FHA, confer upon any party hereto, or to any Bondholder any right against FHA, or relieve FHA of any obligation under the FHA mortgage insurance.

Section 6.09. Remedies Vested in Trustee. All rights of action, including the right to file proof of claims, under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any holders of the Bonds, and any recovery of judgment shall be for the benefit as provided herein of the holders of the Outstanding Bonds.

Section 6.10. Remedies of Bondholders. No holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default shall have occurred of which the Trustee shall have been notified as provided herein; (b) such default shall have become an event of default; (c) the holders of at least 25 % of the Bonds Outstanding shall have made written request to the Trustee and shall have offered reasonable opportunity to the Trustee either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (d) such holders shall have offered to the Trustee indemnity as provided herein; and (e) the Trustee shall within 60 days thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding; it being understood and intended that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture or the rights of any other holders of Bonds or to obtain priority or preference over any other holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all holders of Bonds with respect to which there is a default. Nothing contained in this Indenture shall, however, affect or impair the right of any Bondholder to enforce the payment of the principal of, the premium, if any, and interest on any Bond at the maturity thereof or the obligation of the Issuer to pay the principal of, premium, if any, and interest on the Bonds issued hereunder to the respective holders thereof, at the time, in the place, from the sources and in the manner expressed in said Bonds.

Section 6.11. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder with respect to the Trust Estate herein



conveyed, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 6.12. Waivers of Events of Default. The Trustee shall waive any event of default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds upon the written request of the holders of a majority of the Bonds Outstanding with respect to which there is a default; provided, however, that there shall not be waived (a) any event of default in the payment of the principal of any Bonds at the date of maturity specified therein, or upon proceedings for mandatory redemption, (b) any default in the payment when due of the interest or premium on any such Bonds, unless prior to such waiver or rescission all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such default shall have occurred, on overdue installments of interest or all arrears of payments of principal or premium, if any, when due (whether at the stated maturity thereof or upon proceedings for mandatory redemption) as the case may be, and all expenses of the Trustee (including attorney's fees), in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

Section 6.13. Opportunity to Cure Default Under Mortgage Note. Prior to the date of recordation of assignment of a Mortgage to FHA pursuant to Section 6.06 hereof and prior to the date of notice of redemption of the Bonds pursuant to Section 3.01 hereof, the Trustee may allow a Developer to cure any default under the Mortgage Note and Mortgage but only subject to the following conditions and provided that during the period the Trustee is allowing such Developer to cure, it shall continue to pursue benefits under the FHA mortgage insurance.

(1) The Developer must pay to the Trustee any overdue payments of principal of and interest on the Mortgage Note.

(2) The Developer must cure any non-monetary defaults under the Mortgage, the Indenture and any related documents to the satisfaction of the Trustee.

(3) If any money has been withdrawn from the Trust Estate to be used in connection with the default, the Developer must:

(a) redeposit under the Trust Estate an amount at least equal to the amount withdrawn, or

(b) provide the Trustee with cash or a letter of credit in such form acceptable to the Trustee, together with written confirmation from the Rating Agency that such letter of credit would not adversely affect the Rating Agency's rating on the Bonds that (i) provides a source for the payment of the principal of and interest on the Bonds and

(ii) is in an amount at least equal to the amount withdrawn from the Trust Estate plus an amount equal to the interest that would have been earned on the withdrawn amount had it been invested at the rate of 6.20% per annum, and

(c) provide to the Trustee an unqualified opinion of nationally recognized bankruptcy counsel, satisfactory to the Trustee (and approved by the Trustee's counsel) with respect to the deposit specified in (a) or (b) above and which opinion (i) if the deposit is in the form of a letter of credit (which letter of credit must be issued or confirmed by a bank whose unsecured long-term debt is rated by the Rating Agency at least as high as the rating then in effect on the Bonds) states that the letter of credit is enforceable against the bank or (ii) if the deposit is in any other form states that such amounts are exempt from claims of creditors of the provider of such funds pursuant to 11 U.S.C. Sections 362(a) and 547(b).

(4) The Developer must deposit or cause to be deposited with the Trustee an amount equal to any loss of investment income resulting from the failure to make any Mortgage Note payments when due and provide to the Trustee an opinion of counsel of the type described in paragraph (3)(c) above with respect thereto.

(5) The Trustee must receive written confirmation from FHA that the cure of any such default and the withdrawal of any notice of assignment of the Mortgage Note and Mortgage that had been given under Section 6.06 will not adversely affect the FHA mortgage insurance on the Mortgage Note or be construed as a waiver or reduction thereof.

(6) Cash flow projections, prepared by a qualified independent third party, shall be delivered to the Trustee which show that after the action taken under (3) above, the timely payment of the principal of and interest on the Bonds and the Qualified Expenses required to be paid from the Expense Fund will not be adversely affected.

(7) The Trustee shall not allow the cure of the default if it would adversely affect (i) the timely payment of debt service on the Bonds or (ii) the exclusion of interest on the Bonds from gross income for federal income tax purposes.

(8) The Developer shall pay all expenses of the Trustee, the Issuer, and the Mortgage Servicer, extraordinary or otherwise (and including, without limitation, any legal fees and expenses) incurred in connection with such default and provide to the Trustee an opinion of counsel of the type described in paragraph 3(c) above with respect thereto.

The Trustee shall not allow a cure of a default under the Mortgage Note until it shall have received a written confirmation from the Rating Agency that such cure shall not adversely affect the rating on the Bonds. The allowance by the Trustee of any cure upon a default under the Mortgage Note will not affect any subsequent default proceedings with respect to the FHA mortgage insurance or any claims thereunder.

[End of Article VI]

## ARTICLE VII

### THE TRUSTEE

Section 7.01. Certain Duties and Responsibilities. (a) Except during the continuance of an event of default:

(1) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee.

(b) In case an event of default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(1) This subsection (c) shall not be construed to limit the effect of subsection (a) of this Section;

(2) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(3) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with directions received pursuant to Sections 6.03, 6.10 or 6.13 or the direction of the holders of a majority of the Bonds relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(4) In the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates, reports or opinions, or other instruments furnished to the Trustee by a proper party.

(d) No provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

(f) The Trustee shall not be required to furnish any bond or surety for the performance of its obligations hereunder.

(g) The Trustee is hereby authorized and directed to execute and deliver this Indenture and the Investment Agreement, and further, is hereby directed to execute, deliver and carry out its obligations under the Letter of Representation.

Section 7.02. Notice of Default. Within 90 days after the Trustee is deemed to have notice under Section 7.03(j) of any default hereunder, the Trustee shall transmit by registered or certified mail at the expense of the Developer, to the holders of all Bonds then Outstanding, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Bond when due, the Trustee shall be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the interests of the holders of the Bonds. For the purpose of this Section, the term "default" means any event that is, or after notice or lapse of time or both would become, an event of default.

Section 7.03. Certain Rights of Trustee. Except as otherwise provided in Section 10.01:

(a) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or order of the Issuer shall be sufficiently evidenced by a request or an order signed by an authorized representative of the Issuer and any resolution of the Issuer may be sufficiently evidenced by a certificate of the President of the City Council of the Issuer;

(c) any notice, request, direction, election, order or demand of the Developer mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Developer by any general partner of the Developer (unless other evidence in respect thereof be herein specifically prescribed);

(d) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any

action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate signed by an authorized representative of the Issuer;

(e) the Trustee may consult with counsel, architects and engineers and other experts, and the written advice of such counsel, architects or engineers and other experts shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(f) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the holders of the Bonds pursuant to this Indenture, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction;

(g) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer and the Developer, personally or by agent or attorney;

(h) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys but the Trustee shall be responsible for any misconduct or negligence on the part of such agent or attorney;

(i) notwithstanding anything to the contrary contained in this Indenture, the Trustee shall have the right, but shall not be required, to demand, with respect to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to those matters required by the terms hereof as a condition of such action by the Trustee, all as is deemed desirable by the Trustee for the purpose of establishing the right of the Issuer or the Developer, as the case may be, to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee;

(j) the Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure in any of the payments to the Trustee required to be made by Article IV unless the Trustee shall be specifically notified in writing of such default by the Issuer or the holders of at least 25 % of the Bonds or shall otherwise have actual knowledge thereof;

(k) all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the corporate trust office of the Trustee at its Notice Address; and

(l) the Trustee may in its individual or any other capacity become the owner or pledgee of the Bonds with the same rights as it would have if it were not the Trustee.

Section 7.04. Money Held in Trust. Money held by the Trustee shall be held separately in trust, segregated from other funds of the Trustee.

Section 7.05. Trustee's Fees and Expenses; Indemnification. (a) On each February 1 and August 1, the Trustee shall be paid an amount equal to its Qualified Expenses. To the extent not otherwise paid to the Trustee hereunder, such Qualified Expenses shall be paid to the Trustee after such dates by the Developer.

(b) The Issuer shall indemnify the Trustee and its officers, directors and employees, and hold them harmless against any liabilities, losses and expenses, that it may incur or arising out of or in connection with the acceptance of its duties under, or administration of the Trust Estate in accordance with the terms of the Indenture, including reasonable costs and expenses of counsel to defend themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties hereunder; provided, however, that except with respect to the Expense Fund, the Trustee shall not look to any moneys in the Trust Estate for payment of any fees, expenses, compensation or indemnity.

Section 7.06. Successor Trustee. (a) Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Trustee hereunder and vested with all the title to the whole property or Trust Estate and all the trusts, powers, discretion, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

(b) Any corporation into which any trustee hereunder may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which any Trustee hereunder shall be a party, shall be the successor trustee under this Indenture, without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding, provided that such Issuer shall meet the requirements of Section 7.10.

Section 7.07. Resignation by the Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 60 days' written notice by registered or certified mail to the Issuer and to each registered owner of the Bonds then Outstanding; provided that no such resignation shall take effect until a successor Trustee shall have been



appointed and shall have accepted such appointment as provided in Sections 7.09 and 7.10. If no successor Trustee shall have been appointed and have accepted appointment within 60 days following the giving of all required notices of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

Section 7.08. Removal of Trustee. Any Trustee hereunder may be removed at any time by an instrument appointing a successor meeting the requirements of Section 7.10, executed by the holders of a majority in aggregate principal amount of the Bonds then Outstanding, filed with the Trustee and the Issuer.

Section 7.09. Appointment of Successor Trustee. If the Trustee or any successor trustee resigns or is removed or dissolved, or if its property or business is taken under the control of any state or federal court or administrative body, a vacancy shall forthwith exist in the office of the Trustee, and the ~~\\~~Issuer shall appoint a successor, meeting the requirements of Section 7.10, but only upon the receipt of written approval by FHA of the appointment, and shall mail notice of such appointment to the holders of the Bonds, as the case may be. If the Issuer fails to make such appointment, the holders of a majority in principal amount of the Bonds then Outstanding may do so, but only upon the receipt of written approval by FHA of the appointment.

Section 7.10. Qualification of Successor. A successor trustee shall be a state or national bank with trust powers or a bank and trust company or a trust company having capital and surplus of at least \$10,000,000, shall be a mortgagee approved by FHA, and shall immediately upon and as a condition of becoming trustee hereunder, be assigned the Mortgage Note and Mortgage and the Loan Agreement.

Section 7.11. Instruments of Succession. Any successor trustee shall execute, acknowledge and deliver to the Issuer an instrument accepting such appointment hereunder; and thereupon such successor trustee, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein. The Trustee herein shall assign the Mortgage Note and Mortgage and the Loan Agreement to such successor trustee, without recourse or warranty (express or implied), and shall pay over to the successor trustee all moneys held by it hereunder; and the Trustee herein and the Trustee shall execute and deliver an instrument transferring to the successor trustee all the estates, properties, rights, powers and trusts hereunder of the Trustee herein.

Section 7.12. Enforcement of the Mortgage Note, Mortgage and Servicing Agreement; Amendments to Mortgage Note and Mortgage. (a) The Trustee shall maintain at all times its status in good standing as an FHA-approved mortgagee.

(b) The Trustee shall enforce the full and punctual performance by the Developer of all covenants, agreements and obligations on the part of the Developer to be performed under the Mortgage Note, Mortgage, Regulatory Agreement, Loan Agreement and Servicing Agreement, and the full and punctual performance by the Mortgage Servicer of all covenants,

agreements and obligations on the part of the Mortgage Servicer to be performed under the Servicing Agreement. In the event of a termination of the Servicing Agreement, or a resignation by the Mortgage Servicer, the Trustee shall use its best efforts to arrange for the appointment of a substitute Mortgage Servicer which is an FHA-approved mortgagee with experience in servicing FHA-insured loans for multifamily housing or health care projects; and pending the appointment of a substitute Mortgage Servicer, the Trustee shall perform all duties to be performed by the Mortgage Servicer under the Servicing Agreement.

(c) Except as may be permitted in this Indenture, the Trustee shall not consent to any amendment to the Mortgage Note, Mortgage or Loan Agreement unless the Trustee has received the prior written consent of FHA and unless the Trustee determines that such amendment will not adversely affect the security for the Bonds and will not adversely affect the sufficiency of payments under the Mortgage Note and Mortgage (including FHA insurance benefits) for payment of debt service on the Bonds, taking into account income from the Debt Service Reserve Fund.

Section 7.13. Authenticating Agent. (a) From time to time, the Trustee may, in its sole discretion, appoint and at its own cost compensate one or more authenticating agents with respect to the Bonds which shall be authorized to act on behalf of the Trustee in authenticating Bonds in connection with the issuance, delivery and registration of transfer or exchange of the Bonds. Wherever reference is made in this Indenture to the authentication of Bonds by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication on behalf of the Trustee by an authenticating agent and a certificate of authentication executed on behalf of the Trustee by an authenticating agent. Each authenticating agent must be an institution meeting the requirements of Section 7.10 hereof.

(b) Any institution meeting the requirements of Section 7.10 hereof succeeding to the corporate agency business of an authenticating agent shall continue to be an authenticating agent without the execution or filing of any document or any further act on the part of the Trustee or such authenticating agent.

(c) An authenticating agent may at any time resign by giving written notice of resignation to the Trustee. The Trustee may at any time terminate the agency of an authenticating agent by giving notice of termination to such authenticating agent. Upon receiving such a notice of resignation or upon such a termination, or in case at any time an authenticating agent shall cease to be acceptable to the Trustee, the Trustee promptly may appoint a successor authenticating agent. Any successor authenticating agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an authenticating agent.

(d) The provisions of Sections 7.01, 7.03 and 7.17 hereof shall be applicable to any authenticating agent (other than for its authentication of the Bonds).

(e) Pursuant to an appointment made under this Section, in lieu of the Trustee's execution by manual signature, the Bonds may be executed by the facsimile signature of the

Trustee and have endorsed thereon a certificate of authentication in substantially the following form:

This is one of the Bonds described in the within-mentioned Trust Indenture.

Name of Authenticating Agent

as Authenticating Agent for the Trustee  
by

Authorized Signatory

(f) Any Bond authenticated in accordance with the provisions of Section 7.13(e) hereof shall be dated the date of endorsement of such authentication.

Section 7.14. Execution of Documents. The Trustee is hereby specifically authorized and directed to perform and carry out the following duties:

(a) execute and deliver the Tax Regulatory Agreement, the Financing Statements described in Section 5.04 hereof and the Bonds;

(b) perform any and all other duties as may be authorized in writing by holders of not less than 51 % of the aggregate principal amount of the Bonds outstanding.

Section 7.15. Trustee Not Liable for Bonds. The recitals contained herein and in the Bonds (other than the certification of authentication on the Bonds) shall be taken as the statements of the Issuer or the Developer, as the case may be, and the Trustee assumes no responsibility for the correctness of such recitals. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Bonds (except that the Bonds shall be duly and validly authenticated by it) or of the Mortgage, the Mortgage Note or any related document. The Trustee shall not be accountable for the use or application by the Issuer or the Developer of any of the Bonds or of the proceeds of such Bonds, or for the use or application of any funds paid to the Issuer or the Developer in respect of the Mortgage or deposited in or withdrawn from the Trust Estate by the Issuer or the Developer. Subject to Section 7.12(b) hereof, the Trustee shall have no responsibility or liability for the existence or validity of the Mortgage, the validity of the transfer of the Mortgage to the Trust Estate or of any intervening assignment, or the review of the Mortgage (it being understood that the Trustee has not reviewed and does not intend to review such matters).

Except for such liability as is finally determined to have resulted from the Trustee's gross negligence or bad faith, (i) no recourse shall be had for any claim based on any provision of this Indenture or the Bonds against the Trustee in its individual capacity, (ii) the Trustee shall not have any personal obligation, liability or duty whatsoever to any holder of a Bond or any other person with respect to any such claim and (iii) any such claim shall be asserted solely against the Trust.

Section 7.16. Limitation of Liability. No personal liability will attach to the Trustee, and the Trustee shall have no liability except as expressly provided in this Indenture. In all contractual dealings and undertakings by the Trustee on behalf of the Trust, the Trustee shall include a written notice to the following effect:

The liability of the Trust and the Trustee with respect to the transactions contemplated herein and the obligations of the parties arising hereunder are limited to the assets of the Trust, and the Trustee shall have no personal liability with respect thereto in contract, tort or otherwise as partners or under any other legal theory or arrangement. All persons dealing with the Trustee expressly acknowledge that the Trustee has no personal liability or any liability beyond the assets of the Trust.

All contracts and written instruments of the Trustee must incorporate the terms of this Agreement by reference and give notice as to the availability of a copy of this Indenture.

Section 7.17. Trustee May Own Bonds. The Trustee in its individual capacity or any other capacity may become the owner or pledgee of Bonds with the same rights as it would have if it were not the Trustee.

[End of Article VII]

## ARTICLE VIII

### SUPPLEMENTAL INDENTURES

Section 8.01. Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee may, without the consent of or notice to any of the Bondholders, enter into a Supplemental Indenture as shall not be inconsistent with the terms and provisions hereof or materially adverse to the interests of the holders of the Bonds for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Indenture;
- (b) to subject to the lien and pledge of this Indenture additional revenues, properties or collateral;
- (c) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or any of them;
- (d) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or under any state securities laws;
- (e) to permit the Trustee to comply with any obligations imposed upon it by law;
- (f) to achieve compliance of this Indenture with any applicable federal securities or tax laws;
- (g) to maintain the exclusion of interest on the Series A Bonds from gross income for federal income tax purposes;
- (h) to improve or maintain the rating on the Bonds; and
- (i) in connection with any other change in this Indenture that, in the judgment of the Trustee, is not to the prejudice of the Trustee or the Bondholders.

Section 8.02. Supplemental Indentures Requiring Consent of Bondholders. The Issuer and the Trustee may, with the consent of the holders of not less than two-thirds of the Bonds, from time to time, enter into Supplemental Indentures for the purpose of modifying, altering, amending, adding to or rescinding any of the terms or provisions of Section 8.01 contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing in this Section contained shall permit, or be construed as permitting, without the consent of the owners of all

the Bonds who would be affected thereby (a) an extension of the Stated Maturity or a reduction in the principal amount or reduction in the rate, or extension of time of payment of interest on, or reduction of any premium payable on the redemption of, any Bonds, without the consent of the holders of all of the Bonds Outstanding affected hereby; (b) the creation of any lien prior to or on a parity with the lien of this Indenture; (c) a reduction in the amount of the Bonds whose consent is required for the execution of such supplemental indentures, without the consent of the holders of all the Bonds at the time Outstanding which would be affected by the action to be taken; (d) the modification of the rights, duties or immunities of the Trustee without the consent of the Trustee; (e) a privilege or priority of any Bond over any other Bonds; (f) any action that, in the opinion of Bond Counsel, may result in the loss of the exclusion of interest on the Series A Bonds from gross income for federal income tax purposes; or (g) any change in Section \\5.11.

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed, postage prepaid, to all Bondholders. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the corporate trust office of the Trustee for inspection by all Bondholders. If, within 60 days or such longer period as shall be prescribed by the Issuer following the mailing of such notice, the holders of not less than two-thirds of the Bonds at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as is in this Section permitted and provided, this Indenture shall be deemed to be modified and amended in accordance therewith. The Trustee shall not be obligated to enter into a supplemental indenture unless it shall have received an opinion of counsel, upon which it shall rely, as conclusive evidence that execution and delivery of a supplemental indenture has been effected in compliance with the provisions of this Article.

**Section 8.03. Supplemental Indenture With Respect to Custody Agreement Termination.**  
If the Custody Agreement is automatically terminated pursuant to subsections (i) and (ii) of Section 6.01(a) thereof, the Issuer and the Trustee may not enter into a Supplemental Indenture without receiving an opinion of Bond Counsel that such amendment to the Indenture will not adversely affect the exemption of interest on the Series A Bonds from the gross income of the owners thereof.



Section 8.04. Notification of Investment Agreement Provider. The Trustee shall deliver to the Investment Agreement Provider written notice of all proposed amendments to the Indenture, which notice shall be accompanied by the proposed amendments. No amendment of the Indenture shall have the effect of diminishing the Investment Agreement Provider's rights or remedies under the Investment Agreement without its prior written consent.

[End of Article VIII]

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF INDENTURE

Section 9.01. Defeasance. When the principal of, and interest on, all Bonds issued hereunder have been paid, or provision has been made for payment of the same, together with all other sums payable hereunder by the Issuer, the right, title and interest of the Trustee shall thereupon cease and the Trustee, on demand of the Issuer, shall release the lien of this Indenture, and, at the written direction of the Developer, either (i) cancel the Mortgage Note and return the same to the Developer, shall endorse the Mortgage for cancellation, and shall execute such documents to evidence such release as may be reasonably required by the Issuer and the Developer and shall turn over to the Developer or such person, body or authority as may be entitled to receive the same all balances remaining in any funds hereunder or (ii) endorse, transfer, assign and convey the Mortgage Note to the party directed by the Developer (the "Investor") and shall execute such documents to evidence such endorsement, transfer, assignment, and conveyance as may be reasonably required by the Issuer and the Developer and shall turn over to the Developer or such person, body or authority as may be entitled to receive the same all balances remaining in any funds hereunder; provided, however, that in the event of a default under the Mortgage and payment of a claim under the mortgage insurance in FHA debentures, if any principal remains outstanding on such FHA debentures when the principal of, and interest on all Bonds has been paid, or provision therefor has been made, as provided below, the Trustee shall return such FHA debentures to FHA for cancellation, unless the Issuer and the Trustee shall have received a written opinion of nationally recognized bond counsel satisfactory to both that retention of such FHA debentures will not adversely affect the exemption of interest on the Series A Bonds from federal income tax.

Proper provision for the payment of the principal of and interest on the Bonds may be made by delivery to the Trustee of (a) cash, (b) non-callable direct obligations of the United States of America, or non-callable obligations fully guaranteed as to principal and interest by the United States of America, maturing on or before the dates when payments in respect of the Bonds become due, and the principal amount of which and the interest thereon which when due will be in an aggregate amount sufficient without reinvestment to make all payments on the Bonds when due, (c) non-callable obligations of the Resolution Funding Corporation representing an undivided interest in payments of interest from Resolution Funding Corporation obligations, or (d) any combination of cash and such obligations (collectively, "Defeasance Obligations"). The lien of this Indenture shall not be discharged until the Trustee shall have received an opinion of bankruptcy counsel, acceptable to the Trustee, to the effect that payment of such moneys to the Bondholders will not constitute a voidable preference under Section 547 or be recoverable under Section 362 or Section 550(a) of the United States Bankruptcy Code in the event of the bankruptcy of the Developer.

Section 9.02. Exchange of Bonds for Trust Estate. Upon the termination of the Custody Agreement pursuant to Section 6.02(c) thereof, the Depositor may, at its option, instruct the Issuer to instruct the Trustee to (i) purchase the entire principal amount of the Outstanding Series A Bonds from the Depositor, (ii) establish a defeasance escrow with the Trustee with

Defeasance Obligations provided by the Depositor, in an amount sufficient to defease the Series B Bonds to the earliest date on which such Series B Bonds are subject to optional redemption pursuant to Section 3.01(a) hereof, and to call the Series B Bonds for redemption on such date. In consideration for the purchase of the Series A Bonds and the establishment of the defeasance escrow, the Trustee shall assign the Trust Estate to the Depositor in exchange for the Series A Bonds and Defeasance Obligations. Upon receipt of the Series A Bonds and the Defeasance Obligations, the Trustee shall cancel all of the Outstanding Series A Bonds, defease the Outstanding Series B Bonds pursuant to the provisions of Section 9.01 hereof, and release the Trust Estate from the lien of this Indenture; provided, however, that the lien of this Indenture shall not be discharged until the Trustee shall have received an opinion of bankruptcy counsel, as described in Section 9.01 hereof. Notwithstanding anything in this Indenture to the contrary, this Section 9.02 may not be amended or supplemented in any way without the consent of the Depositor.

[End of Article IX]

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Consents and Other Instruments of Bondholders. Any consent, request, direction, approval, waiver, objection, appointment or other instrument required by this Indenture to be signed and executed by the Bondholders may be signed and executed in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such instrument, if made in the following manner, shall be sufficient for any of the purposes of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken under such instrument, namely:

(a) The fact and date of the execution by any Person of any such instrument may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such instrument acknowledged to him the execution thereof. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such affidavit or certificate shall also constitute sufficient proof of his authority.

(b) The ownership of Bonds shall be provided by the Bond Register.

(c) Any request, consent or vote of the holder of any Bond shall bind every future holder of the same Bond and the holder of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or permitted to be done by the Trustee or the Issuer pursuant to such request, consent or vote.

(d) In determining whether the holders of the requisite amount of the Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds that are owned by the Issuer or the Developer or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer or the Developer shall be disregarded and deemed not to be Outstanding for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver. Only Bonds which the Trustee knows to be so owned shall be disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

Section 10.02. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, FHA, the Developer

and the holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions hereof.

Section 10.03. Severability. If any provision of this Indenture shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable, to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Indenture contained shall not affect the remaining portions of this Indenture or any part thereof.

Section 10.04. Notices. Except as otherwise provided, all notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed postage prepaid, return receipt requested, or dispatched by telegram, addressed to the Notice Address of the Person to whom such notices, certificates or other communications are given.

Section 10.05. Payments Due on Saturdays, Sundays and Holidays. In any case where the date of maturity of interest on or principal of the Bonds, or the date fixed for redemption of any Bonds, shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the state in which the corporate trust operations office is located are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 10.06. Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.07. Situs. The State shall be deemed to be the situs of the Trust Estate for all purposes of this Indenture.

Section 10.08. No Recourse. No recourse shall be had for the payment of the principal of (or premium, if any) or the interest on the Bonds, or for any claim based thereon, or otherwise in respect thereof, or based on or in respect of the Indenture or any indenture supplemental hereto, against any trustee, member, officer, agent, counsel or director, as such, past, present or future, of the Issuer or any successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance thereof and as part of the consideration for the issue thereof, expressly waived and released.

Section 10.09. Successors and Assigns. All the covenants and representations contained in this Indenture, by or on behalf of the Issuer and the Trustee, shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

Section 10.10. Books, Records and Accounts. The Trustee agrees to keep proper books, records and accounts in which complete and correct entries shall be made of all transactions relating to the receipt, disbursements, investment, allocation and application of the proceeds received from the sale of the Bonds, the revenues received from the Loan Agreement, the Loan, the Funds created pursuant to this Indenture and all other moneys held by the Trustee hereunder. The Trustee shall make such books, records and accounts available for inspection by the Issuer or the owner of any Bond during reasonable hours and under reasonable conditions.

Section 10.11. Subordination to HUD Regulations. Notwithstanding anything in this instrument to the contrary, the provisions hereof are subject to the following:

(a) In the event of conflict between the provisions of this instrument and the National Housing Act, the regulations and administrative requirements promulgated thereto, such acts, regulations and administrative requirements shall control. No amendment to this instrument shall conflict with any such acts, regulations, administrative requirements.

(b) This instrument shall not be construed to restrict or adversely affect the duties and obligations of the Trustee under the contracts of insurance between the Trustee and FHA with respect to the Loan.

(c) The Bonds are not a debt of the United States of America, FHA, or any other federal governmental agency and are not guaranteed by the full faith and credit of the United States.

(d) Any project funds held by the Trustee, as mortgagee, for or on behalf of the Developer shall be maintained separate and apart from the funds established and held by the Trustee for the holders of the Bonds and the various escrows and funds, if any, under this Indenture.

Section 10.12. Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State of Indiana.

Section 10.13. Headings. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

[End of Article X]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed and their respective corporate seals to be hereunto affixed and attested, all as of the date and year first above written.

\\CITY OF \\FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Name: \\  
Title: \\Mayor

(SEAL)

Attest:

By: \_\_\_\_\_  
Name: \\  
Title: Clerk

\\

SOCIETY NATIONAL BANK, INDIANA,  
as Trustee

Attest:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:



EXHIBIT A

[FORM OF SERIES A BOND]

UNITED STATES OF AMERICA  
STATE OF INDIANA

\\CITY OF FORT WAYNE, INDIANA  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
\\HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES \\1993A

No.

CUSIP:

Dated Date: \\August 1, \\1993

Maturity Date: August 1, \\2013

Interest Rate: \\10.25 %

Payment Dates: As described below

Registered Owner: CEDE & CO.

Principal Amount: THREE MILLION \\SEVEN HUNDRED \\TWENTY THOUSAND  
AND NO/100 DOLLARS

THE \\CITY OF \\FORT WAYNE, INDIANA (the "Issuer"), a municipal corporation and political subdivision of the State of Indiana (the "State"), FOR VALUE RECEIVED, hereby promises (but only out of the Net Revenues (as defined below)) to pay to the registered owner identified above or registered assigns (subject to any right of prior redemption provided for in the Indenture referred to below), on the Maturity Date set forth above, the Principal Amount set forth above and to pay interest thereon from the Dated Date set forth above, or from the most recent Payment Date (described below) to which interest has been paid or duly provided for, on each Payment Date (described below), at the applicable interest rate per annum set forth above until the principal hereof is duly paid or provided for.

"Payment Date" means, while the Certificates bear interest at the Weekly Reset Rate the first day of each month, provided, however, that while the Certificates bear interest at the Term Reset Rate, and upon receipt by the Trustee of the Notice of Termination of Custody Agreement substantially in the form attached to the Custody and Tender Option Agreement such Payment Date shall occur on each February 1 and August 1, commencing on February 1, \\1994.

Notwithstanding the foregoing, if the date hereof is after a Regular Record Date for such interest (which shall be the 15th day of the month immediately preceding each Payment Date) and before the following Payment Date, and if the Issuer shall not default in the payment of interest due on such Payment Date, this Series A Bond shall bear interest from such Payment Date. The interest so payable on any Payment Date will, subject to certain exceptions provided in the Indenture referred to below, be paid to the person in whose name this Bond (or one or more predecessor Bonds) is registered at the close of business on the Regular Record Date next preceding such Payment Date. Principal of, and premium, if any, and interest on this Series A Bond are payable in such coin or currency of the United States of America as at the time of payment is legal tender for payment of private and public debts, at the operations office of Society National Bank, Indiana, or its successor in trust (the "Trustee"). Payment of interest alone shall be made by check or draft mailed to the address of the person entitled thereto.

This Bond is one of a duly authorized issue of bonds of the Issuer designated as its Health Care Facilities Revenue Refunding Bonds \\Health Quest Realty X Issue (FHA Insured Mortgage) Series \\1993A, limited in aggregate principal amount to \\\$3,720,000 (the "Series A Bonds"), all issued pursuant to the provisions of the Title 36, Article 7, Chapters 11.9 and 12 of the Indiana Code, as amended, and Title 5, Article 1, Chapter 5 of the Indiana Code, as amended (collectively, the "Act"). Simultaneously with the issuance of the Series A Bonds, the Issuer has also issued \\\$345,000 principal amount of its Taxable Revenue Bonds \\Health Quest Realty X Issue (FHA Insured Mortgage) Series \\1993B (the "Series B Bonds"). The Series A Bonds and the Series B Bonds are issued under and are equally and ratably secured as to principal, premium, if any, and interest by a Trust Indenture dated as of \\August 1, \\1993 between the Issuer and the Trustee (the "Indenture"), to which Indenture and all indentures supplemental thereto (copies of which are on file at the operations office of the Trustee) reference is hereby made for a description of the trust estate under the Indenture, the nature and extent of the security, the terms and conditions upon which the Bonds are issued and secured, and the rights of the owners thereof.

As described in the Indenture, "Net Revenues" means all income, revenues, proceeds and other amounts received by the Issuer or the Trustee from or in connection with the Mortgage Loan (including any prepayments thereof) and any and all interest, profits or other income derived from the investment of amounts in any funds or accounts (but not the Rebate Fund) established pursuant to this Indenture, but shall not include (i) amounts retained by the Mortgage Servicer as a servicing fee, (ii) any payments received by the Trustee which are to be applied by the Trustee (as mortgagee under the Mortgage), pursuant to paragraph (9)(c)(I) or (II) of the Mortgage or (iii) any funds held by the Trustee (as mortgagee under the Mortgage) on behalf of the Developer pursuant to the Mortgage or the Regulatory Agreement.

The Bonds are limited obligations of the Issuer. Neither the Commissioners of the Issuer nor any persons executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds shall not be a debt of the State of Indiana, or any political subdivision thereof (other than the Issuer), and neither the State of Indiana nor any political subdivision thereof (other than the Issuer) shall be liable thereon, nor in any event shall the Bonds be payable out of any funds or properties other than those of the Issuer specifically

pledged thereto. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. The Bonds are not a debt of the United States of America, HUD or any other federal governmental agency or the FHA and are not guaranteed by the full faith and credit of the United States.

The Bonds are being issued to refund the Issuer's City of Fort Wayne, Indiana Health Care Facilities Revenue Bonds Health Quest Realty X Issue (FHA Insured Mortgage), Series A (the "Prior Bonds") and to pay certain costs of issuance. The Prior Bonds were originally issued to fund a mortgage loan (the "Mortgage Loan") insured by the Federal Housing Administration ("FHA"), an organizational unit of the United States Department of Housing and Urban Development ("HUD"), made to Health Quest Realty X, an Indiana general partnership (the "Owner"), for the purpose of constructing and equipping a skilled home facility (the "Project"). Under the provisions of a Loan Agreement (defined in the Indenture), the Issuer will, upon the terms and conditions specified in the Indenture, cause the proceeds of the Bonds to be applied in such manner to cause the Prior Bonds to be refunded in full. Under the Loan Agreement, the Owner has agreed to pay the Mortgage Note (defined in the Indenture) in installments scheduled to be sufficient to pay the principal of, interest on and premium, if any, of the Bonds when due. The Bonds will be secured by a pledge of all right, title and interest of the Issuer in the Net Revenues and all other security for the Mortgage Loan, which will be transferred to the Trustee upon the defeasance of the lien of the indenture securing the Prior Bonds, and by certain other security described in the Indenture. The Bonds are being issued in the form of fully registered bonds without coupons.

The Bonds are subject to redemption prior to maturity by the Issuer, but only upon the request of the Developer, at any time in order of maturity and within a maturity by lot, from optional prepayments of principal on the Mortgage Note made by the Developer or from proceeds of refunding bonds and deposited in the Redemption Fund established under this Indenture, in an aggregate amount which, together with all such prior redemptions under this paragraph during the then current calendar year, does not exceed \\\$[ ]. Any such redemption shall be made at a redemption price of 100% of the principal amount thereof, plus interest accrued to the redemption date.

The Bonds are also subject to redemption prior to maturity by the Issuer, but only upon the request of the Developer, in whole at any time, or in part on any February 1 or August 1 on or after the Closing Date in order of maturity and within a maturity by lot, from optional prepayments of principal on the Mortgage Note made by the Developer and deposited in the Redemption Fund established under this Indenture, or from the proceeds of refunding bonds. Any such redemption shall be made at a redemption price (shown below as a percentage of the principal amount to be redeemed which is in excess of \\\$[ ] during any calendar year), plus interest accrued to the redemption date:

<u>Redemption Periods</u>	<u>Redemption Prices</u>
Closing Date through July 31, \1994	102 %
August 1, \1994 through July 31, \1995	101.5
August 1, \1995 through July 31, \1996	101
August 1, \1996 through July 31, \1997	100.5
August 1, \1997 and thereafter	100

In the event of an optional redemption of Bonds on a date on which the redemption price includes a redemption premium, the Trustee shall not give notice of such redemption unless (i) the Trustee shall have received an opinion of bankruptcy counsel, acceptable to the Trustee, to the effect that payment of such money to Bondholders would not constitute a voidable preference under Section 547 or be recoverable under Section 362 or Section 550(a) of the United States Bankruptcy Code in the event of the bankruptcy of the Developer; and (ii) the Trustee shall have received the prepayment of the Mortgage Loan.

The Bonds are subject to special mandatory redemption prior to maturity (i) as a whole or in part, at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the redemption date in direct order of maturity on each February 1 or August 1 from Excess Revenues transferred from the Bond Fund to the Redemption Fund for such purpose pursuant to the Indenture and (ii) as a whole, on any Payment Date for which timely notice of redemption can be given, if the sum of the amount held in the Bond Fund, the Debt Service Reserve Fund and the Redemption Fund equals or exceeds the redemption price of the Bonds then outstanding, plus Qualified Expenses then due and payable from any amounts held in such funds.

The Bonds are subject to redemption in whole or in part on the earliest practicable date for which proper notice of redemption can be given at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption to the extent the proceeds of any condemnation award or insurance recovery are applied to the prepayment of the Mortgage Note.

To the extent that FHA Mortgage Insurance benefits are paid to the Trustee in cash, the Trustee shall redeem the Bonds, in whole or in part, on the earliest practicable date for which proper notice of redemption can be given at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption.

If FHA mortgage insurance benefits are paid to the Trustee in FHA debentures and such FHA debentures can be sold or tendered to HUD at a price sufficient to redeem the Bonds, the Trustee shall redeem the Bonds therefrom on the earliest practicable date for which proper notice of redemption can be given at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption.

The Bonds shall be called for redemption in whole or in part on the earliest practicable date for which proper notice of such redemption can be given pursuant to the Indenture at a

redemption price of 100% of the principal amount, plus accrued interest to the date of redemption in the event that prepayment of the Mortgage Note is required to be made (i) pursuant to applicable rules, requirements or policies of HUD in order to avoid an FHA mortgage insurance claim or otherwise or (ii) without notice while under the supervision of a trustee in bankruptcy proceedings.

For purposes of selecting Bonds for redemption, Bonds shall be deemed to be composed of \$5,000 portions and any such portion may be separately redeemed. Such Bonds shall be selected for redemption in direct order of their maturity and within each maturity, by lot. The Trustee shall promptly notify the Issuer in writing of the Bonds or portions thereof selected for redemption. The Trustee's selection of Bonds for redemption shall be final and conclusive.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond may be exchanged, and its transfer may be registered, by the registered owner hereof in person or by his attorney duly authorized in writing at the operations corporate trust office of the Trustee, but only in the manner and subject to the limitations set forth in the Indenture and upon payment of a charge to reimburse the Trustee for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange, and upon surrender and cancellation of this Bond. Upon exchange or registration of such transfer, a new registered Bond or Bonds of the same maturity and interest rate and of authorized denomination or denominations for the same aggregate principal amount will be issued in exchange therefor. The Trustee shall not be required to transfer any Bond after the mailing of notice calling such Bond for redemption has been made.

The Issuer and the Trustee may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

The Bonds are issuable only as registered Bonds without coupons in denominations of \$5,000 principal amount and any integral multiple thereof.

The principal hereof may be declared or may become due on the conditions, in the manner and at the time set forth in the Indenture upon the occurrence of an event of default as provided in the Indenture.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on this Bond, or for any claim based hereon, or otherwise in respect hereof, or based on or in

respect of the Indenture or any indenture supplemental thereto, against any trustee, member, officer, agent, counsel or director, as such, past, present or future, of the \\Issuer or any successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law and that the issuance of this Bond, together with all other obligations of the \\Issuer, does not exceed or violate any constitutional or statutory limitation.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until such Bond shall have been authenticated by the certificate of the Trustee endorsed hereon.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be duly executed in its name by the facsimile signatures of its \\ Mayor under its official seal, or a facsimile thereof, and attested by the facsimile signature of its Clerk\\.

\\CITY OF \\FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Name: \\  
Title: \\Mayor

(SEAL)

Attest:

By: \_\_\_\_\_  
Name: \\  
Title: Clerk  
\\



CERTIFICATE OF AUTHENTICATION

This Series A Bond is one of the Series A Bonds of the issue described in the within mentioned Indenture.

SOCIETY NATIONAL BANK, INDIANA,  
as Trustee

By \_\_\_\_\_  
Authorized Officer

Authentication Date:

\_\_\_\_\_

## ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_  
\_\_\_\_\_ the within Bond and all rights thereunder and hereby irrevocably  
constitutes and appoints \_\_\_\_\_ to transfer the within-mentioned Bond on the books  
kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

Please insert social security or other identifying number of assignee: \_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange  
or a commercial bank or trust company.

NOTICE: The signature to this Assignment must correspond with the name as it appears upon  
the face of the within bond in every particular, without alteration or enlargement or any change  
whatever.

EXHIBIT B

[FORM OF SERIES B BOND]

UNITED STATES OF AMERICA  
STATE OF INDIANA

\\CITY OF \\FORT WAYNE, INDIANA  
HEALTH CARE FACILITIES TAXABLE REVENUE BONDS  
\\HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES \\1993B

No.

CUSIP:

Dated Date: \\August 1, \\1993

Maturity Date: August 1, \\2003

Interest Rate: \\8%

Payment Dates: February 1  
and August 1, commencing  
February 1, \\1994

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: THREE HUNDRED FORTY-FIVE THOUSAND AND NO/100 DOLLARS

THE \\CITY OF \\FORT WAYNE, INDIANA (the "Issuer"), a political subdivision of the State of Indiana (the "State"), FOR VALUE RECEIVED, hereby promises (but only out of the Net Revenues, as defined below) to pay to the registered owner identified above or registered assigns (subject to any right of prior redemption provided for in the Indenture referred to below), on the Maturity Date set forth above, the Principal Amount set forth above and to pay interest thereon from the Dated Date set forth above, or from the most recent Payment Date to which interest has been paid or duly provided for, on each Payment Date set forth above, at the applicable interest rate per annum set forth above until the principal hereof is duly paid or provided for. Notwithstanding the foregoing, if the date hereof is after a Regular Record Date for such interest (which shall be the 15th day of the month immediately preceding each Payment Date) and before the following Payment Date, and if the Issuer shall not default in the payment of interest due on such Payment Date, this Series B Bond shall bear interest from such Payment Date. The interest so payable on any Payment Date will, subject to certain exceptions provided in the Indenture referred to below, be paid to the person in whose name this Series B Bond (or one or more predecessor Series B Bonds) is registered at the close of business on the Regular

Record Date next preceding such Payment Date. Principal of, and premium, if any, and interest on this Series B Bond is payable in such coin or currency of the United States of America as at time of payment is legal tender for payment of private and public debts, at the operations corporate trust office of Society National Bank, Indiana, or its successor in trust (the "Trustee"). Payment of interest alone shall be made by check or draft mailed to the Registered Owner. As described in the Indenture, "Net Revenues" means all income, revenues, proceeds and other amounts received by the Issuer or the Trustee from or in connection with the Mortgage Loan (including any prepayments thereof) and any and all interest, profits or other income derived from the investment of amounts in any funds or accounts (but not the Rebate Fund) established pursuant to this Indenture, but shall not include (i) amounts retained by the Mortgage Servicer as a servicing fee, (ii) any payments received by the Trustee which are to be applied by the Trustee (as mortgagee under the Mortgage), pursuant to paragraph (9)(c)(I) or (II) of the Mortgage or (iii) any funds held by the Trustee (as mortgagee under the Mortgage) on behalf of the Developer pursuant to the Mortgage or the Regulatory Agreement.

This Series B Bond is one of a duly authorized issue of bonds of the Issuer designated as its Health Care Facilities Taxable Revenue Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993B, limited in aggregate principal amount to \$345,000 (the "Series B Bonds"), all issued pursuant to the provisions of Title 36, Article 7, Chapters 11.9 and 12 of the Indiana Code, as amended (the "Act"). The Series B Bonds and the Issuer's Health Care Facilities Revenue Refunding Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993A (the "Series A Bonds," collectively, the "Bonds") are issued under and are equally and ratably secured as to principal, premium, if any, and interest by a Trust Indenture dated as of August 1, 1993 between the Issuer and the Trustee (the "Indenture"), to which Indenture and all indentures supplemental thereto (copies of which are on file at the operations corporate trust office of the Trustee) reference is hereby made for a description of the trust estate under the Indenture, the nature and extent of the security, the terms and conditions upon which the Series B Bonds are issued and secured, and the rights of the owners thereof.

The Bonds are limited obligations of the Issuer. Neither the Commissioners of the Issuer nor any persons executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds shall not be a debt of the State of Indiana, or any political subdivision thereof (other than the Issuer), and neither the State of Indiana or any political subdivision thereof (other than the Issuer) shall be liable thereon, nor in any event shall the Bonds be payable out of any funds or properties other than those of the Issuer specifically pledged thereto. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. The Bonds are not a debt of the United States of America, HUD or any other federal governmental agency or the FHA and are not guaranteed by the full faith and credit of the United States.

The Series A Bonds are being issued to refund the Issuer's City of Fort Wayne, Indiana Health Care Facilities Revenue Bonds Health Quest Realty X Issue (FHA Insured Mortgage), Series A (the "Prior Bonds"). The Prior Bonds were originally issued to fund a mortgage loan (the "Mortgage Loan") insured by the Federal Housing Administration ("FHA"),

an organizational unit of the United States Department of Housing and Urban Development ("HUD") made to Health Quest Realty \X, an Indiana \general partnership (the "Owner"), for the purpose of constructing and equipping a \skilled home facility (the "Project"). The proceeds of the Series B Bonds will be used to pay costs of issuance of the Bonds and to fund [\_\_\_\_\_]. The Issuer will upon the terms and conditions specified in the Indenture cause the proceeds of the Bonds to be applied in such manner to cause the Prior Bonds to be refunded in full, in order to secure the full and timely payment of all principal, premium and interest on the Bonds when due. Under the Loan Agreement (defined in the Indenture), the Owner has agreed to pay the Mortgage Note (defined in the Indenture) in installments scheduled to be sufficient to pay the principal of, interest on and premium, if any, of the Bonds when due. The Bonds will be secured by a pledge of all right, title and interest of the Issuer in the Net Revenues and all other security for the Mortgage Loan, which will be transferred to the Trustee upon the defeasance of the lien of the indenture securing the Prior Bonds, and by certain other security described in the Indenture. The Series B Bonds are being issued in the form of fully registered bonds without coupons.

The Bonds are subject to redemption prior to maturity by the Issuer, but only upon the request of the Developer at any time in order of maturity and within a maturity by lot, from optional prepayments of principal on the Mortgage Note made by the Developer or from proceeds of refunding bonds and deposited in the Redemption Fund established under the Indenture, in an aggregate amount which, together with all such prior redemptions under this paragraph during the then current calendar year, does not exceed \[\$[\_\_\_\_\_]]. Any such redemption shall be made at a redemption price of 100% of the principal amount thereof, plus interest accrued to the redemption date.

The Bonds are also subject to redemption prior to maturity by the Issuer, but only upon the request of the Developer, in whole at any time, or in part on any February 1 or August 1 commencing after the Closing Date in order of maturity and within a maturity by lot, from optional prepayments of principal on the Mortgage Note made by the Developer and deposited in the Redemption Fund established under this Indenture, or from the proceeds of refunding bonds. Any such redemption shall be made at a redemption price (shown below as a percentage of the principal amount to be redeemed which is in excess of \ \$[\_\_\_\_\_]) during any calendar year), plus interest accrued to the redemption date:

<u>Redemption Periods</u>	<u>Redemption Prices</u>
Closing Date through July 31, \1994	102 %
August 1, \1994 through July 31, \1995	101.5
August 1, \1995 through July 31, \1996	101
August 1, \1996 through July 31, \1997	100.5
August 1, \1997 and thereafter	100

In the event of an optional redemption of Bonds on a date on which the redemption price includes a redemption premium, the Trustee shall not give notice of such redemption unless (i) the Trustee shall have received an opinion of bankruptcy counsel, acceptable to the Trustee,

to the effect that payment of such money to Bondholders would not constitute a voidable preference under Section 547 or be recoverable under Section 362 or Section 550(a) of the United States Bankruptcy Code in the event of the bankruptcy of the Developer; and (ii) the Trustee shall have received the prepayment of the Mortgage Loan.

The Bonds are subject to special mandatory redemption prior to maturity (i) as a whole or in part, at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the redemption date in direct order of maturity on each February 1, or August 1 from Excess Revenues transferred from the Bond Fund to the Redemption Fund for such purpose pursuant to the Indenture and (ii) as a whole, on any February 1 or August 1 for which timely notice of redemption can be given, if the sum of the amount held in the Bond Fund, the Debt Service Reserve Fund and the Redemption Fund equals or exceeds the redemption price of the Bonds then outstanding, plus Qualified Expenses then due and payable from any amounts held in such funds.

The Bonds are subject to redemption in whole or in part on the earliest practicable date for which proper notice of redemption can be given at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption to the extent the proceeds of any condemnation award or insurance recovery are applied to the prepayment of the Mortgage Note.

To the extent that FHA Mortgage Insurance benefits are paid to the Trustee in cash, the Trustee shall redeem the Bonds, in whole or in part, on the earliest practicable date for which proper notice of redemption can be given at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption.

If FHA mortgage insurance benefits are paid to the Trustee in FHA debentures and such FHA debentures can be sold or tendered to HUD at a price sufficient to redeem the Bonds and the Series B Bonds, the Trustee shall redeem the Bonds therefrom on the earliest practicable date for which proper notice of redemption can be given at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption.

The Bonds shall be called for redemption in whole or in part on the earliest practicable date for which proper notice of such redemption can be given pursuant to the Indenture at a redemption price of 100% of the principal amount, plus accrued interest to the date of redemption in the event that prepayment of the Mortgage Note is required to be made (i) pursuant to applicable rules, requirements and policies of HUD in order to avoid an FHA Mortgage Insurance claim or (ii) without notice while under the supervision of a trustee in bankruptcy proceedings.

For purposes of selecting Bonds for redemption, Bonds shall be deemed to be composed of \$5,000 portions and any such portion may be separately redeemed. The Bonds shall be selected for redemption in direct order of their maturity and within each maturity, by lot. The Trustee shall promptly notify the Issuer in writing of the Bonds or portions thereof selected for redemption. The Trustee's selection of Bonds for redemption shall be final and conclusive.

Upon surrender of any Bond redeemed in part only, the Issuer shall execute and the Trustee shall authenticate and deliver to the registered owner thereof, without expense to such registered owner, a new Bond or Bonds of the same maturity and of authorized denominations equal in aggregate principal amount or Accreted Value to the unredeemed portion of the Bond surrendered.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Series B Bond may be exchanged, and its transfer may be registered, by the registered owner hereof in person or by his attorney duly authorized in writing at the operations corporate trust office of the Trustee, but only in the manner and subject to the limitations set forth in the Indenture and upon payment of a charge to reimburse the Trustee for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange, and upon surrender and cancellation of this Series B Bond. Upon exchange or registration of such transfer, a new registered Series B Bond or Series B Bonds of the same maturity and interest rate and of authorized denomination or denominations for the same aggregate principal amount will be issued in exchange therefor. The Trustee shall not be required to transfer any Series B Bond after the mailing of notice calling such Series B Bond for redemption has been made.

The Issuer and the Trustee may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

The Bonds are issuable only as registered Bonds without coupons in denominations of \$5,000 principal amount and any integral multiple thereof.

The principal hereof may be declared or may become due on the conditions, in the manner and at the time set forth in the Indenture upon the occurrence of an event of default as provided in the Indenture.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on this Series B Bond, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any trustee, member, officer, agent, counsel or director, as such, past, present or future, of the Issuer or any successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.



It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Series B Bond do exist, have happened and have been performed in due time, form and manner as required by law and that the issuance of this Series B Bond, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation.

This Series B Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until such Series B Bond shall have been authenticated by the certificate of the Trustee endorsed hereon.

IN WITNESS WHEREOF, the Issuer has caused this Series B Bond to be duly executed in its name by the facsimile signatures of its \\Mayor under its official seal, or a facsimile thereof, and attested by the facsimile signature of its Clerk\\.

\\CITY OF \\FORT WAYNE, INDIANA

By: \_\_\_\_\_

Name: \\

Title: \\Mayor

(SEAL)

Attest:

By: \_\_\_\_\_

Name: \\

Title: Clerk\\

## CERTIFICATE OF AUTHENTICATION

This Series B Bond is one of the Series B Bonds of the issue described in the within mentioned Indenture.

SOCIETY NATIONAL BANK, INDIANA,  
as Trustee

By \_\_\_\_\_  
Authorized Officer

Authentication Date:

\_\_\_\_\_

## ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_ the within Series B Bond and all rights thereunder and hereby irrevocably constitutes and appoints \_\_\_\_\_ to transfer the within-mentioned Series B Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

Please insert social security or other identifying number of assignee: \_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

NOTICE: The signature to this Assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

TRUST INDENTURE

between

CITY OF FORT WAYNE, INDIANA

and

SOCIETY NATIONAL BANK, INDIANA,  
as Trustee

Securing

\$3,720,000

City of Fort Wayne, Indiana  
Health Care Facilities Revenue Refunding Bonds  
Health Quest Realty X Issue  
(FHA Insured Mortgage)  
Series 1993A

and

\$345,000

City of Fort Wayne, Indiana  
Health Care Facilities Taxable Revenue Bonds  
Health Quest Realty X Issue  
(FHA Insured Mortgage)  
Series 1993B

Dated as of August 1, 1993

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## TRUST INDENTURE

THIS TRUST INDENTURE dated as of August 1, 1993 by and between the City of Fort Wayne, Indiana (the "Issuer"), a municipal corporation and a political subdivision of the State of Indiana, and Society National Bank, Indiana (formerly St. Joseph Bank & Trust Company) (the "Trustee"), a national banking association validly existing under the laws of the United States of America;

### W I T N E S S E T H:

WHEREAS, the Issuer has, pursuant to Title 36, Article 7, Chapter 12 of the Indiana Code, as amended and by Ordinance No.     adopted by the Common Council of the Issuer on [Date], created as a department of the Issuer, the Fort Wayne Economic Development Commission (the "Commission"); and

WHEREAS, pursuant to the Act (as defined herein) the Commission has heretofore authorized and approved the financing of the costs of a project, consisting of the acquisition and improvement of certain premises within the boundaries of the Issuer and construction thereon and equipping of a nursing home facility (the "Project") containing 160 skilled and intermediate care beds, owned by Health Quest Realty X, an Indiana limited partnership (the "Developer"); and

WHEREAS, the Project was financed with the proceeds of Issuer's \$4,470,000 aggregate initial principal amount of City of Fort Wayne, Indiana, Health Care Facilities Revenue Bonds, Health Quest Realty X Issue (FHA Insured Project), Series A (the "1983 Bonds") issued pursuant to the Act (as defined herein); and

WHEREAS, to provide for payment of costs of the Project the Issuer loaned the proceeds of the 1983 Bonds (the "Mortgage Loan") to the Developer pursuant to a Financing Agreement dated as of November 1, 1983 (the "Financing Agreement") between the Issuer and the Developer, pursuant to which the Developer agreed to make payments to provide sufficient funds to pay the principal of and interest on the 1983 Bonds; and

WHEREAS, the Mortgage Loan is evidenced by the Developer's mortgage note (the "Mortgage Note") in the original principal amount of \$4,010,800, and a Mortgage securing the Mortgage Note constituting a first lien on the Project (the "Mortgage"); and

WHEREAS, pursuant to a commitment dated October 19, 1983 (the "Commitment for Mortgage Insurance") issued to Cambridge Healthcare Funding, Inc. (formerly known as Blyth Eastman Paine Webber Health Care Funding, Inc.), as Mortgage Servicer and a Regulatory Agreement with the Developer (the "Regulatory Agreement"), the United States Secretary of Housing and Urban Development, acting through the Federal Housing Commissioner ("FHA"), insured the advances of funds secured by the Mortgage, and the Mortgage Note was initially endorsed for insurance by FHA pursuant to Section 232 of the National Housing Act, as amended, and the regulations thereunder; and

WHEREAS, the Issuer, as requested by the Developer, has determined to issue, sell and deliver its "\$3,720,000 aggregate principal amount City of Fort Wayne, Indiana, Health Care Facilities Revenue Refunding Bonds, Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993A" (the "Series A Bonds") and its "\$345,000 aggregate principal amount City of Fort Wayne, Indiana, Health Care Facilities Taxable Revenue Bonds, Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993B" (the "Series B Bonds") (the Series A Bonds and the Series B Bonds are sometimes referred to herein as the "Bonds") pursuant to Title 36, Article 7, Chapters 11.9 and 12 of the Indiana Code, as amended, and Title 5, Article 1, Chapter 5 of the Indiana Code, as amended (collectively, the "Act") and this Indenture to deposit funds with the Escrow Agent (as described below) for the refunding of the 1983 Bonds, the refinancing of the Project and to provide for certain costs of issuance of the Bonds; and

WHEREAS, the Issuer and the Developer have entered into a Loan Agreement (the "Loan Agreement") dated as of August 1, 1993, pursuant to which the Developer borrowed funds to provide for the prepayment of the Mortgage Note and the contemporaneous refunding of the 1983 Bonds; and

WHEREAS, the Issuer and Society National Bank, Indiana, as escrow agent (the "Escrow Agent"), have entered into an Escrow Agreement (the "Escrow Agreement") dated as of August 1, 1993, wherein the Issuer is causing to be irrevocably deposited with the Escrow Agent sufficient moneys to provide for the payment and defeasance of all of the Outstanding 1983 Bonds; and

WHEREAS, upon the redemption of the 1983 Bonds, the Mortgage Note and the Mortgage will be held by the Trustee as security for the Bonds and FHA will continue to insure the advances of funds secured by the Mortgage and the Mortgage Note; and

WHEREAS, the Issuer, by Ordinance No.        adopted by the Common Council of the Issuer on [Date], 1993, approved the issuance of the Bonds for the purpose of redeeming the 1983 Bonds; and

WHEREAS, all requirements of law have been fully complied with, and all other acts and things necessary to make the Bonds, when executed by the Issuer and when authenticated and delivered by the Trustee, duly issued, legal, valid and binding obligations of the Issuer, and all other acts and things necessary to constitute this Indenture a legal, valid and binding instrument for the security of the Bonds have been done and performed;

NOW, THEREFORE, the Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the owners thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, does hereby bargain, sell, convey, pledge, assign and grant a security interest unto the Trustee in and to the following, subject only to the provisions of this Indenture permitting the application thereof or

to the purposes and on the terms and conditions set forth herein (said property being herein referred to as the "Trust Estate"), to wit:

#### GRANTING CLAUSE ONE

All right, title and interest of the Issuer in the Net Revenues, the Mortgage Loan, the Loan Agreement and the Mortgage Note, the Mortgage and all other security therefor or certificates or instruments evidencing the same, and all amendments, modifications and renewals thereof and any interest earnings thereon.

#### GRANTING CLAUSE TWO

All right, title and interest of the Issuer in and to any money held under this Indenture by the Trustee except for (i) moneys and investment securities held by the Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, (ii) moneys and investment obligations held by the Trustee for the payment of the principal of, premium, if any, and accrued interest on the Bonds that have become due and payable but not presented to the Trustee for such payment and (iii) moneys and investment securities held in the Rebate Fund.

#### GRANTING CLAUSE THREE

Except for the Rebate Fund, all funds, moneys and securities and any and all other rights and interest in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in said trust and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all owners of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the others of the Bonds, provided that the Rebate Fund and any money or investments required to be deposited therein and any other amount required to be paid to the United States of America shall be held for the benefit of the United States of America and not for the benefit of the owners of the Bonds;

PROVIDED, HOWEVER, that if the Issuer or its successors or assigns shall pay or cause to be paid to the owners of the Bonds the principal of, premium, if any, and interest to become due thereon at the times and in the manner provided in Article IX and if the Issuer shall keep, perform and observe, or cause to be kept, performed and observed all its covenants, warranties and agreements contained herein, this Indenture and the estate and rights hereby

granted shall cease and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey, in accordance with Section 9.01 hereof, any property at the time subject to the lien of this Indenture which may then be in its possession, except for the Rebate Fund, except moneys held by the Trustee for the payment of principal of, premium, if any, and interest on the Bonds; otherwise, this Indenture shall be and remain in full force and effect, and upon the trusts and subject to the covenants and conditions hereinafter set forth.



## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. The terms defined in this Section 1.01 or in the Preamble hereto (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01 or in the Preamble hereto.

"Act" means collectively Title 36, Article 7, Chapters 11.9 and 12 of the Indiana Code, as amended and Title 5, Article 1, Chapter 5 of the Indiana Code, as amended.

"Authorized Denominations" means \$5,000 or any integral multiple thereof.

"Beneficial Owner" means, with respect to Bonds while in a Book-Entry Form, each person who beneficially owns such Bond(s) and on whose behalf, directly or indirectly, such Bond is held by the Depository pursuant to a Book-Entry System.

"Bond Counsel" means any attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America or the District of Columbia.

"Bond Fund" means the Bond Fund established pursuant to Section 4.03.

"Bondholder" or "Holder" or "Registered Owner," when used with respect to any bond, means the person or persons in whose name such bond is registered, provided that, with respect to Bonds while in Book-Entry Form, for purposes of any consent or approval hereunder, the term "Bondholder" shall mean the Beneficial Owner.

"Bond Register" and "Bond Registrar" have the respective meaning specified in Section 2.06.

"Bond Year" means the period of 12 consecutive months ending on August 1 of any year (providing that the first Bond Year shall mean the period from the Closing Date through August 1, 1993) occurring on or before the final Payment Date on the Bonds.

"Bonds" means collectively the Series A Bonds and the Series B Bonds.

"Book-Entry Form" means a Bond authorized to be issued to, and issued to and registered in the name of, a Depository (or its nominee) directly or indirectly for the beneficial owner thereof, with each maturity evidenced by a single Bond certificate.

"Book-Entry System" means a system of record keeping, securities clearance and funds transfer and settlement maintained for securities by the Depository and Participants.

"Business Day" means any day other than a Saturday, Sunday, a legal holiday or a day on which banking institutions in the State are authorized or required by law to remain closed.

"Certificates" shall have the meaning as set forth in the Custody Agreement.

"Certified Resolution" means a copy of one or more resolutions or ordinances certified by the Clerk of the Issuer under its seal to have been duly adopted by the Common Council of the Issuer, and to be in effect on the date of such certification.

"Closing Date" means the date of initial issuance and delivery of the Bonds.

"Code" means the Internal Revenue Code of 1986, as amended, and with respect to a specific section thereof, such reference shall be deemed to include the Regulations promulgated under such section.

"Collateral Agreement" means the Collateral Deposit Agreement, dated as of August 1, 1993, between the Developer and the Depositor.

"Costs of Issuance Fund" means the Costs of Issuance Fund established pursuant to Section 4.03 hereof.

"Custodian" means The Central Trust Company, N.A., as Custodian under the Custody Agreement, and any successors thereto.

"Custody Agreement" means the Custody and Tender Option Agreement, dated as of August 1, 1993, entered into with respect to the Bonds among the Depositor, the Custodian, the Tender Agent and the Remarketing Agent.

"Debt Service" means the amount of principal of, premium, if any, and interest on the Bonds due on any Payment Date.

"Debt Service Reserve Fund" means the Debt Service Reserve Fund established pursuant to Section 4.03 hereof.

"Debt Service Reserve Fund Requirement" means an amount equal to the sum of 12 months' interest on the original principal amount of the Bonds plus one month's interest on the then outstanding principal amount of the Mortgage Note.

"Depositor" means Bank One, Akron, NA, and any successors thereto.

"Depository" means initially DTC, or any other person who shall be a Holder of all Bonds directly or indirectly.

"DTC" means The Depository Trust Company in New York, New York or its successors or assigns, for the benefit of beneficial owners and approved by the Developer and the Trustee

to act as the Depository, provided that any Depository shall be registered or qualified as a "clearing agency" within the meaning of Section 17A of the Securities Exchange Act of 1934, as amended.

"Developer" means Health Quest Realty X, an Indiana general partnership.

"Escrow Agent" means Society National Bank, Indiana as Escrow Agent under the Escrow Agreement.

"Escrow Agreement" means the agreement, dated as of August 1, 1993, between the Issuer and the Escrow Agent.

"Excess Revenues" means the Net Revenues remaining after all deposits of Net Revenues have been made pursuant to Sections 4.04(a), (b) and (c) hereof.

"Expense Fund" means the Expense Fund established pursuant to Section 4.03 hereof.

"FHA" means the Federal Housing Administration, an organizational unit within HUD.

"HUD" means the U.S. Department of Housing and Urban Development and its successors and assigns.

"Indenture" means this Trust Indenture and all indentures supplemental hereto.

"Investment Agreement" means the Investment Agreement, dated August 24, 1993, between the Trustee and [Berkshire Hathaway Inc.].

"Investment Agreement Provider" means, initially, [Berkshire Hathaway, Inc.], or another entity, the unsecured long-term debt rating of which is rated by the Rating Agency with a rating at least as high as the rating on the Bonds.

"Investment Securities" means any of the following that at the time are lawful investments under the laws of the State for the money held hereunder: (1) direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof when such obligations are backed by the full faith and credit of the United States, which obligations include the following: (i) United States Treasury obligations which are direct or fully guaranteed obligations; (ii) obligations, debentures, notes or other evidences of indebtedness issued or guaranteed by the Government National Mortgage Association; (iii) Federal Housing Administration debentures; (iv) Federal Home Loan Mortgage Corporation participation certificates and senior debt obligations fully guaranteed as to timely payment of principal and interest; (v) Federal National Mortgage Association's mortgage-backed securities and senior debt obligations (excluded are stripped principal-only mortgage securities which are valued greater than par on the portion of unpaid principal and stripped interest-only mortgage securities); (vi) non-callable obligations of the Resolution Funding Corporation representing an undivided interest in payments of interest from Resolution Funding Corporation

obligations; (2) certificates of deposit, time deposits, bankers acceptances (having maturities of not more than 365 days) and repurchase agreements collateralized by obligations described in clause (1) hereof of any bank the unsecured debt obligations of which (or, in the case of the principal bank in a bank holding company, senior unsecured debt obligations of the bank holding company) have been rated AA3P-1 by Moody's; (3) deposits which are fully insured by the Federal Deposit Insurance Corporation or its successor; (4) investment agreements, having similar rates and terms as the Investment Agreement and acceptable to the agency rating the Bonds, with institutions whose unsecured debt or claims paying ability, as the case may be, is and continues to be at all times rated by Moody's or, if Moody's no longer maintains a rating on the Bonds, any other nationally recognized bond rating agency then maintaining a rating on the Bonds at least equal to the rating on the Bonds; (5) units of a taxable money market portfolio rated in the highest rating category by Moody's; (6) the Investment Agreement; and (7) obligations the interest on which is excluded from gross income pursuant to Section 103 of the Code (including investment in regulated investment companies that invest exclusively in such obligations), provided that such obligations are not specified private activity bonds within the meaning of Section 57(a)(5)(C) of the Code and have a Moody's rating of at least Aa or P-.

"Letter of Representations" means the Letter of Representations among the Depository, the Issuer and the Trustee entered into in connection with issuance of the Bonds and any amendments or supplements thereto.

"Loan" means the loan from the Issuer to the Developer, pursuant to the Loan Agreement, to provide for the prepayment of the 1983 Bonds.

"Loan Agreement" means the Loan Agreement dated as of August 1, 1993 between the Issuer and the Developer, and any amendments or supplements thereto.

"Moody's" means Moody's Investors Service.

"Mortgage" means the Mortgage executed by the Developer concurrently with the delivery of the 1983 Bonds, delivered by the Developer to the Mortgage Servicer, and assigned to the Trustee, as mortgagee, or granted to the Mortgage Servicer and assigned to the Trustee, together with the building loan agreement(s) and regulatory agreement(s) incorporated therein by reference.

"Mortgage Loan" means the FHA-insured mortgage loan made to the Developer by the Issuer to finance the construction and equipping of the Project.

"Mortgage Note" means the Mortgage Note executed by the Developer concurrently with the delivery of the 1983 Bonds, and delivered by the Developer to the Mortgage Servicer, and assigned to the Trustee, as mortgagee under the Mortgage in the original principal amount of \$4,010,800 or any portion thereof which note or portion thereof will heretofore evidence the indebtedness of the Developer under the Loan Agreement and secures the Bonds.

"Mortgage Servicer" means Cambridge Healthcare Funding, Inc. and its successors and assigns.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Net Revenues" means all income, revenues, proceeds and other amounts received by the Issuer or the Trustee from or in connection with the Mortgage Loan (including any prepayments thereof) and any and all interest, profits or other income derived from the investment of amounts in any funds or accounts (but not the Rebate Fund) established pursuant to this Indenture, but shall not include (i) amounts retained by the Mortgage Servicer as a servicing fee, (ii) any payments received by the Trustee which are to be applied by the Trustee (as mortgagee under the Mortgage), pursuant to paragraph (9)(c)(I) or (II) of the Mortgage or (iii) any funds held by the Trustee (as mortgagee under the Mortgage) on behalf of the Developer pursuant to the Mortgage or the Regulatory Agreement.

"1954 Code" means the Internal Revenue Code of 1954, as amended and in effect prior to the enactment of the Tax Reform Act of 1986, and with respect to a specific section thereof, such reference shall be deemed to include the Regulations promulgated under such section.

"1983 Bonds" shall have the same meaning as that term is defined in the Preamble to this Indenture.

"Notice Address" means, with respect to each of the Persons listed below, the address set forth below until such time as such Person shall have notified each of the other Persons listed below of a new Notice Address.

If to the Issuer:	City of Fort Wayne City-County Building One \Main Street Fort Wayne, Indiana 46802 Attention:
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If to the Trustee: (For Transfers and Redemptions)	Society National Bank, Indiana Corporate Trust Services 1900 Pacific Avenue 16th Floor, Tower Dallas, Texas 75201-4501
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<u>Notices Only</u>	Society National Bank, Indiana 202 South Michigan Street South Bend, Indiana 46601-0006 Attention: Corporate Trust Department
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If to HUD or FHA:

U.S. Department of Housing and  
Urban Development  
451 Seventh Street, S.W.  
Washington, D.C. 20410

"Ordinance" means Ordinance No.      of the Issuer adopted on [Date], 1993.

"Outstanding," when used with respect to the Bonds, means all Bonds theretofore authenticated and delivered under this Indenture, except:

- (a) Bonds theretofore cancelled by the Trustee or theretofore delivered to the Trustee for cancellation;
- (b) Bonds for the payment or redemption of which money or obligations shall have been theretofore deposited with the Trustee in accordance with Article IX; and
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Indenture.

In determining whether the holders of a requisite aggregate principal amount of Outstanding Bonds have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions of this Indenture, Bonds that are owned by the Developer or the Issuer or any affiliate of any one of said entities (for the purpose of this definition, an "affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person) shall be disregarded and deemed not to be outstanding hereunder for the purpose of any such determination. For purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing. Bonds so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Developer, the Issuer or any other obligor on the Bonds. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. The Trustee may conclusively assume that all Bonds are not so owned unless it has written notice to the contrary which references this Indenture.

"Payment Date" means, (i) with respect to the Series A Bonds, from the Closing Date and while the Certificates bear interest at the Weekly Reset Rate, the first day of each month, provided, however, that while the Certificates bear interest at the Term Reset Rate, and upon receipt by the Trustee of the Notice of Termination of Custody and Tender Option Agreement from the Custodian substantially in the form attached to the Custody Agreement, such Payment

Date shall occur on each February 1 and August 1; and (ii) with respect to the Series B Bonds, February 1 and August 1, commencing on February 1, 1994.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Project" means the nursing home facility located within the boundaries of the Issuer and more particularly described in Exhibit A to the Loan Agreement, financed with the proceeds of the 1983 Bonds.

"Qualified Expenses" means the following: (i) the annual accrued fees and expenses of the Trustee, to the extent not otherwise paid, including, among others, all expenses incurred by the Trustee in connection with the determination and adjustments required of it pursuant to Sections 4.10, 5.08 and 5.10 hereof, payable semi-annually in advance on each February 1 and August 1, commencing February 1, 1994; and (ii) the annual fees and expenses of the Rebate Consultant in an amount not to exceed \$[ ] per year of the then outstanding principal amount of the Mortgage payable semi-annually in advance on each February 1 and August 1, commencing February 1, 1994.

"Rating Agency" means Moody's Investors Service and its successors and assigns.

"Rebate Consultant" means Kutak Rock, Omaha, Nebraska, and its successors and assigns.

"Rebate Fund" means the Rebate Fund established pursuant to Section 4.03.

"Regular Record Date" means, with respect to a Payment Date, the close of business on the 15th day of the month immediately preceding such Payment Date whether or not a Business Day.

"Regulations" means the proposed, temporary or final income tax regulations promulgated under the Code, or under the 1954 Code, and effective under the Code, as such regulations may be amended from time to time.

"Regulatory Agreement" means the Regulatory Agreement dated December 7, 1983, between the Developer and FHA.

"Remarketing Agent" means Bank One, Columbus, N.A. and any successors thereto.

"Series A Bonds" means \$3,720,000 original aggregate original principal amount of City of Fort Wayne, Indiana Health Care Facilities Revenue Refunding Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993A.



"Series B Bonds" means \$345,000 original aggregate principal amount of City of Fort Wayne, Indiana Health Care Facilities Taxable Revenue Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993B.

"Servicing Agreement" means the Servicing Agreement entered into between the Mortgage Servicer and the Trustee dated as of November 1, 1983, and any amendments or supplements thereto.

"State" means the State of Indiana.

"Stated Maturity" means, with respect to the Series A Bonds, August 1, 2013, and with respect to the Series B Bonds, August 1, 2002.

"Supplemental Indenture" or "Indenture Supplemental" hereto means any indenture supplemental to this Indenture, now or hereafter authorized and entered into in accordance with the provisions of this Indenture.

"Tax Regulatory Agreement" means the the Tax Regulatory Agreement and No Arbitrage Certificate dated as of August 1, 1993 among the Issuer, the Trustee and the Developer.

"Tender Agent" means The Central Trust Company, N.A., the Tender Agent under the Custody Agreement, and any successors thereto.

"Term Reset Rate" shall have the same meaning as set forth in the Custody Agreement.

"Trustee" means Society National Bank, Indiana, as trustee under this Indenture and any successors in trust hereunder.

"Trustee's Fee" means the fee charged by the Trustee for performance of its obligations hereunder, initially in the amount of \$[ ], and thereafter [ ]% of the aggregate outstanding principal amount of the Bonds, with a minimum of \$[ ] per year.

"Trust Estate" means the property rights, money, securities and other amounts pledged and assigned pursuant to the Granting Clauses of this Indenture.

"Weekly Reset Rate" shall have the same meaning as set forth in the Custody Agreement.

Section 1.02. Rules of Interpretation. The following rules shall apply to the construction of this Indenture unless the context required otherwise: (a) the singular includes the plural and the plural, the singular; (b) words importing any gender include the other genders; (c) references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute to which reference is made and all regulations promulgated pursuant to such statutes; (d) references to "writing" include printing, photocopy, typing, lithography and other means of reproducing words in a tangible visible form; (e) the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; (f) references

to the introductory paragraph, preliminary statements, articles, sections (or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Indenture unless otherwise indicated; (g) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent that such amendments and other modifications are permitted or not prohibited by the terms of this Indenture; (h) references to Persons include their respective successors and assigns permitted or not prohibited by the terms of this Indenture; (i) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles; (j) "or" is not exclusive; (k) provisions apply to successive events and transactions; (l) references to documents or agreements which have been terminated or released or which have expired shall be of no force and effect after such termination, release or expiration; (m) references to mail shall be deemed to refer to first-class mail, postage prepaid, unless another type of mail is specified; (n) all references to time shall be to Columbus, Ohio time; (o) references to specific persons, positions or officers shall include those who or which succeed to or perform their respective functions, duties or responsibilities referred to in the Bond proceedings and (p) the terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Indenture as a whole and not to any particular article, section or subdivision hereof; and the term "heretofore" means before the date of execution of this Indenture, the term "now" means at the date of execution of this Indenture, and the term "hereafter" means after the date of execution of this Indenture.

Section 1.03. Miscellaneous Rules. (a) Counsel Opinions. Any opinion of counsel may be qualified by reference to the constitutional powers of the United States of America and the State, the police and sovereign powers of the State, judicial discretion, equitable principles, and bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights and similar matters.

(b) Consolidated Certifications, Opinions and Instruments. In any case where several matters are required to be certified by, or covered by an opinion of, any specified person, it shall not be necessary that all such matters be certified by, or covered by the opinion of, only one such person, or that they be so certified or covered by only one document, but one such person may certify or give an opinion with respect to some matters and one or more other such persons as to other matters, and any such person may certify or give an opinion as to such matters in one or several documents. When any person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, such instruments may, but need not, be consolidated and form one instrument.

[End of Article I]

## ARTICLE II

### THE BONDS

Section 2.01. Authorized Amount of Bonds; Details of Bonds; Limited Obligation of the Issuer. (a) Bonds may not be issued under this Indenture except in accordance with this Article. There is hereby created and there shall be two issues of Bonds designated (i) "City of Fort Wayne, Indiana Health Care Facilities Revenue Refunding Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993A" in the aggregate original principal amount of \$3,720,000 and (ii) "City of Fort Wayne, Indiana Health Care Facilities Taxable Revenue Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993 B" in the aggregate original principal amount of \$345,000. The Bonds shall provide that the principal of, premium, if any, and interest on the Bonds shall be payable only out of the Trust Estate and that there shall be no other recourse against the Issuer or any property now or hereafter owned by it. The Series A Bonds and the Series B Bonds shall be secured equally and ratably by the Trust Estate.

(b) The Bonds shall be dated August 1, 1993, and shall be issuable in fully registered form without coupons in Authorized Denominations. The Series A Bonds shall bear interest, computed on the basis of a 360-day year of twelve 30-day months and initially payable monthly on each Payment Date until the principal sum is paid or duly provided for, at 9.25% per annum, and shall mature on August 1, 2013 and be issued in the original aggregate principal amount of \$3,720,000.

(c) The Series B Bonds shall have a principal amount of \$345,000, a stated maturity of August 1, 2002 and shall bear interest at the rate of 8% per annum. The Series B Bonds shall bear interest, computed on the basis of a 360-day year of twelve 30-day months, payable on each Payment Date until the principal sum is paid or duly provided for.

(d) The Person in whose name any Bond is registered on the Regular Record Date with respect to a Payment Date shall be entitled to receive the interest payable on such Payment Date (unless such Bond has been called for redemption on a redemption date which is prior to such Payment Date) notwithstanding the cancellation of such Bond upon any registration of transfer or exchange thereof subsequent to such Regular Record Date and prior to such Payment Date; provided, however, that, if and to the extent the Issuer shall default in the payment of the interest due on any Payment Date, such defaulted interest shall be paid as provided in the next paragraph.

Principal of, premium, if any, and interest on the Bonds shall be payable to Holders in lawful money of the United States of America. Any interest on any Bond that is payable, but is not punctually paid or duly provided for, on any Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Bondholder on the relevant Regular Record Date by virtue of having been such Bondholder. The Trustee may elect to make payment of any Defaulted Interest to the Persons in whose names the Bonds (or their respective predecessor Bonds) are registered at the close of business on a special record date for the payment of such Defaulted Interest (a "Special Record Date"), which shall be fixed in the following manner. The

Trustee shall determine the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment, shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class, postage prepaid, to each Bondholder at his address as it appears in the Bond Register not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefore having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Bonds (or their respective predecessor Bonds) are registered on such Special Record Date.

Principal of, and premium, if any, and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be paid by check mailed to the Person entitled thereto at the address as it appears on the Bond Register or at such other address as is furnished to the Trustee in writing by such Person. Principal of, and premium, if any, on the Bonds shall be payable upon presentation thereof at the operations office of the Trustee as the same shall become due and payable. The Trustee shall, upon the written request of any holder of \$1,000,000 or more in aggregate principal amount of the Bonds, make payments of principal of or interest on such Bonds by wire transfer in immediately available funds (indicating the CUSIP number of the Bonds with respect to which such payment is being made) to the account of such holder designated by such holder to the Trustee in writing at least five days before the Regular or Special Record Date for such payment or at least five days before presentment.

(e) The Bonds initially will be delivered by means of a Book-Entry System with no physical distribution of definitive Bonds made to the public. One definitive Bond for each maturity is to be delivered to The Depository Trust Company, New York, New York ("DTC"), and immobilized in its custody. Initially, a Book-Entry System will be employed, evidencing ownership of the Bonds in Authorized Denominations, with transfers of beneficial ownership effected on the records of DTC and its participants (the "DTC Participants") pursuant to rules and procedures established by DTC.

Each DTC Participant will be credited in the records of DTC with the amount of such DTC Participant's interest in the Bonds. Beneficial ownership interests in the Bonds may be purchased by or through DTC Participants. The holders of these beneficial ownership interests are hereinafter referred to as the "Beneficial Owners." The Beneficial Owners will not receive definitive Bonds representing their beneficial ownership interests. The ownership interests of each Beneficial Owner will be recorded through the records of the DTC Participant from which such Beneficial Owner purchased its Bonds. Transfers of ownership interests in the Bonds will be accomplished by book entries made by DTC and, in turn, by DTC Participants acting on behalf of Beneficial Owners.

Payments of principal, premium if any, and interest with respect to the Bonds, so long as DTC is the only Owner of the Bonds, will be paid by the Trustee directly to DTC or its nominee, Cede & Co., as provided in the Letter of Representations dated August , 1993 from

the Issuer and the Trustee to DTC (the "Letter of Representation"). DTC will remit such payments to DTC Participants, and such payments thereafter will be paid by DTC Participants to the Beneficial Owners. The Trustee and the Issuer are not and will not be responsible or liable for payment by DTC or DTC Participants, for sending transaction statements or for maintaining, supervising or reviewing records maintained by DTC or DTC Participants.

If (i) DTC determines not to continue to act as Depository for the Bonds or (ii) the Trustee or the Issuer determines that the continuation of the Book-Entry System of evidence and transfer of ownership of the Bonds would adversely affect the interests of the Issuer or the Beneficial Owners of the Bonds, the Issuer may discontinue the Book-Entry System with DTC. If the Issuer fails to identify another qualified Depository to replace DTC, the Issuer will deliver fully registered definitive Bonds to each Beneficial Owner in Authorized Denominations as such Owner may request.

The Trustee agrees that it will undertake the duties of Agent (as that term is defined in the Letter of Representations) set forth in the Letter of Representations and that those duties to be undertaken by either the Agent or the Issuer in paragraphs 2, 3, 4 and 12 thereof shall be the responsibility of the Trustee.

(f) The Bonds shall be subject to redemption as provided in Article III hereof.

(g) No additional bonds are authorized to be issued under this Indenture.

(h) The Bonds are limited obligations of the Issuer. Neither the Issuer nor any persons executing the Bonds nor any other member, officer, official, employee or agent of the Issuer shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds shall not be a debt of the State of Indiana, or any political subdivision thereof (other than as a limited obligation of the Issuer), and neither the State of Indiana or any political subdivision thereof (other than the Issuer) shall be liable thereon, nor in any event shall the Bonds be payable out of any funds or properties other than those of the Issuer specifically pledged thereto. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. The Bonds are not a debt of the United States of America, HUD or any other federal governmental agency or the FHA and are not guaranteed by the full faith and credit of the United States.

Section 2.02. Authorization of Bonds; Sale and Delivery of the Bonds. Upon execution and delivery of this Indenture, the Trustee shall authenticate and deliver the Bonds to DTC, but only upon the receipt of the following:

(1) A written order of the Issuer directing the Trustee to authenticate and deliver the Bonds against receipt of the purchase price therefor;

(2) A copy, duly certified on behalf of the Issuer, of the Ordinance authorizing the issuance and delivery of the Bonds;

(3) An approving opinion of Bond Counsel regarding the validity of the Bonds and the exclusion of interest on the Series A Bonds from gross income for federal income tax purposes;

(4) An executed counterpart of the Loan Agreement;

(5) A copy of the executed Mortgage Note and Mortgage;

(6) Copies of the Regulatory Agreement, Servicing Agreement and FHA insurance; and

(7) Such other documents, certificates and opinions of counsel as the Issuer and Bond Counsel have advised the Trustee that they have reasonably requested.

Section 2.03. Execution. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Mayor of the \\\uIssuer and Clerk or Assistant Clerk of the Issuer under the corporate seal, or facsimile thereof, of the Issuer. Any facsimile signatures shall have the same force and effect as if said person had manually signed the Bonds. Any reproduction of the official seal of the Issuer on the Bonds shall have the same force and effect as if the official seal of the Issuer had been impressed on the Bonds.

In case any officer whose signature or facsimile of whose signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes as if he had remained in office until delivery.

Section 2.04. Authentication. Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the forms set forth in Exhibit A and Exhibit B hereto for the Series A Bonds and the Series B Bonds, respectively, duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized representative of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all the Bonds.

Section 2.05. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate and deliver a new Bond in lieu of such mutilated, lost, stolen or destroyed Bond, of like maturity and denomination as that mutilated, lost, stolen or destroyed. Any mutilated Bond shall first be surrendered to the Issuer, and in the case of any lost, stolen or destroyed Bond, there shall first be furnished to the Trustee by the person in whose name the Bond is registered evidence of such loss, theft or destruction satisfactory to it together with indemnity satisfactory to it. In the event any such Bond shall have matured, instead of issuing a duplicate Bond, upon the furnishing of

evidence of such loss, theft or destruction together with indemnity satisfactory to it, by the person in whose name such Bond is registered, the Trustee may pay the same without surrender thereof. The Trustee may charge the holder or owner of such Bond with its reasonable fees and expenses in connection with such replacement.

Section 2.06. Transfer of Registration and Exchange of Bonds; Persons Treated as Owners. The Trustee is hereby appointed Bond Registrar and shall cause a register (herein sometimes referred to as the "Bond Register") to be kept for the registration of Bonds and the registration of transfers of Bonds. The registration of any Bond may be transferred only upon an assignment duly executed by the registered holder or his duly authorized representative in such form as shall be satisfactory to the Trustee, and upon surrender of such Bond to the Trustee for cancellation. Whenever any Bond or Bonds shall be surrendered for registration of transfer, the Issuer shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of like maturity of authorized denomination or denominations and for the aggregate principal amount of such Bond or Bonds so surrendered.

In the case of the transfer of any Bond pursuant to the preceding paragraph, any Bond may be exchanged at the office of the Trustee, for a new Bond or Bonds, of any authorized denomination or denominations and for the aggregate principal amount of such Bond then remaining Outstanding.

In all cases in which the registration of Bonds shall be transferred and Bonds shall be exchanged hereunder, the Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange. The Trustee shall not be required to transfer any Bond after the mailing of notice calling such Bond for redemption has been made.

The Person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of and interest on, and premium, if any, on any such Bond shall be made only to or upon the order of such person thereof, or his legal representative, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums to be paid.

Section 2.07. Temporary Bonds. Until definitive Bonds are ready for delivery, there may be executed, and upon the written request of the Issuer, the Trustee shall authenticate and deliver, in lieu of definitive Bonds, one or more temporary typewritten, printed, engraved or lithographed Bonds, in any appropriate denomination, in fully registered form, and of substantially the tenor hereinabove set forth and with such appropriate omissions, insertions and variations as may be required.

If temporary Bonds shall be issued, the Issuer shall cause the definitive Bonds to be prepared and to be executed and delivered to the Trustee, and the Trustee, upon presentation to it at its operations office of any temporary Bond, shall cancel the same and authenticate and deliver in exchange therefor, without charge to the owner thereof, a definitive Bond or Bonds



of an equal aggregate principal amount of the same maturity and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefit and security of this Indenture as the definitive Bonds to be issued and authenticated hereunder. Principal of, premium, if any, and interest on temporary Bonds, when due and payable, if the definitive Bond shall not be ready for exchange, shall be paid on presentation of such temporary Bonds for notation of such payment thereon by the Trustee.

[End of Article II]

## ARTICLE III

### REDEMPTION OF BONDS

Section 3.01. Redemption of Bonds. The Bonds are subject to redemption prior to maturity as provided below.

(a) Optional Redemption. The Bonds are subject to redemption prior to maturity by the Issuer, but only upon the request of the Developer at any time in order of maturity and within a maturity by lot, from optional prepayments of principal on the Mortgage Note made by the Developer, or from proceeds of refunding bonds, and deposited in the Redemption Fund established under this Indenture, in an aggregate amount which, together with all such prior redemptions under this paragraph during the then current calendar year, does not exceed \\\$601,620. Any such redemption shall be made at a redemption price of 100% of the principal amount thereof, plus interest accrued to the redemption date.

The Bonds are also subject to redemption prior to maturity by the Issuer, but only upon the request of the Developer, in whole at any time, or in part on any February 1 or August 1 on or after the Closing Date in order of maturity and within a maturity by lot, from optional prepayments of principal on the Mortgage Note made by the Developer, or from the proceeds of refunding bonds, and deposited in the Redemption Fund established under this Indenture. Any such redemption shall be made at a redemption price (shown below as a percentage of the principal amount to be redeemed which is in excess of \\\$601,620 in any calendar year), plus interest accrued to the redemption date:

<u>Redemption Periods</u>	<u>Redemption Prices</u>
Closing Date through July 31, 1994	102 %
August 1, 1994 through July 31, 1995	101.5
August 1, 1995 through July 31, 1996	101
August 1, 1996 through July 31, 1997	100.5
August 1, 1997 and thereafter	100

In the event of an optional redemption of Bonds on a date on which the redemption price includes a redemption premium, the Trustee shall not give notice of such redemption unless (i) the Trustee shall have received an opinion of bankruptcy counsel, acceptable to the Trustee, to the effect that payment of such money to Bondholders would not constitute a voidable preference under Section 547 or be recoverable under Section 362 or Section 550(a) of the United States Bankruptcy Code in the event of the bankruptcy of the Developer; and (ii) the Trustee shall have received the prepayment of the Mortgage Loan.

(b) Special Mandatory Redemption Provisions. The Bonds are subject to special mandatory redemption before maturity (i) as a whole or in part, at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the redemption date in direct order of maturity on each February 1 or August 1 from Excess Revenues transferred from the Bond

Fund to the Redemption Fund for such purpose pursuant to Section 4.09 hereof and (ii) as a whole, on any February 1 or August 1 for which proper notice of redemption can be given pursuant to Section 3.05, if the sum of the amount held in the Bond Fund, the Debt Service Reserve Fund, Expense Fund and the Redemption Fund equals or exceeds the redemption price of the Bonds then Outstanding, plus Qualified Expenses then due and payable, from any amounts held in such funds.

(c) Casualty and Condemnation Redemption. The Bonds are subject to redemption in whole or in part on the earliest practicable date for which proper notice of redemption can be given pursuant to Section 3.05 at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption to the extent the proceeds of any condemnation award or insurance recovery are applied to the prepayment of the Mortgage Note (along with a proportionate reduction of the Debt Service Reserve Fund as described in Section 3.02).

(d) Extraordinary Redemption From FHA Mortgage Insurance Benefits in Cash. To the extent that FHA mortgage insurance benefits are paid to the Trustee in cash, the Trustee shall redeem the Bonds, in whole or in part, on the earliest practicable date for which proper notice of redemption can be given pursuant to Section 3.05 at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption.

(e) Redemption After Receipt of FHA Mortgage Insurance Benefits in Debentures. If FHA mortgage insurance benefits are paid to the Trustee in FHA debentures and such FHA debentures can be sold or tendered to HUD at a price (together with other amounts held under the Indenture other than the Rebate Fund) sufficient to redeem the Bonds, the Trustee shall redeem Bonds in whole therefrom on the earliest practicable date for which proper notice of redemption can be given pursuant to Section 3.05 at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption.

(f) Redemption in the Event of Loan Default or Bankruptcy. The Bonds shall be called for redemption in whole or in part on the earliest practicable date for which proper notice of redemption can be given pursuant to Section 3.05 at a redemption price of 100% of the principal amount, plus accrued interest to the date of redemption in the event that prepayment of the Mortgage Note is required to be made (i) pursuant to applicable rules, requirements or policies of HUD in order to avoid an FHA mortgage insurance claim or otherwise, claim or (ii) without premium while under the supervision of a trustee in bankruptcy proceedings (along with a proportionate reduction of the Debt Service Reserve Fund as described in Section 3.02).

Section 3.02. Reduction in Debt Service Reserve Fund. If a redemption of Bonds occurs as a result of a reduction in the principal balance of the Mortgage Loan, the Trustee shall transfer from the Debt Service Reserve Fund to the Bond Fund any amount by which the balance maintained following such redemption in the Debt Service Reserve Fund exceeds the Debt Service Reserve Fund Requirement; provided, however, that if the Mortgage Loan is in default, such redemption will not occur until full FHA mortgage insurance proceeds have been received by the Trustee. Pursuant to Section 3.01(b) hereof, the Trustee will then redeem Bonds in an amount equal, as nearly as practicable, to the amount of the funds transferred to the Bond Fund.

Section 3.03. Partial Redemption. (a) If a redemption of less than all the Outstanding Bonds of a particular maturity pursuant to Section 3.01 above occurs, the particular Bonds to be redeemed within each maturity shall be selected by the Trustee by lot subject to the provisions of paragraph (b) below.

(b) If a redemption of less than all the Outstanding Bonds pursuant to the provisions of Section 3.01 hereof occurs, the Trustee shall redeem a principal amount of Bonds of each maturity by lot.

(c) Notwithstanding the foregoing provisions of this Section 3.03, the Bonds shall be redeemed only in a principal amount of \$5,000 or an integral multiple thereof.

(d) Upon surrender of any Bond redeemed in part only, the Issuer shall execute and the Trustee shall authenticate and deliver to the holder thereof, without expense to such holder, a new Bond or Bonds of the same maturity and series and of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bond surrendered. The Trustee may employ such experts as it may deem necessary to advise it as to the manner of carrying out such redemption and is entitled to rely on such advice.

Section 3.04. Selection of Bonds for Redemption. For purposes of selecting Bonds for redemption, Bonds shall be deemed to be composed of \$5,000 portions and any such portion may be separately redeemed. Such Bonds shall be selected for redemption in direct order of their maturity and within each maturity, by lot. The Trustee shall promptly notify the Issuer in writing of the Bonds or portions thereof selected for redemption. The Trustee's selection of Bonds for redemption shall be final and conclusive.

Section 3.05. Notice of Redemption. Notice of redemption will be given by the Trustee to DTC, in accordance with this Section 3.05, or its nominee at the address provided to the Trustee by DTC. Such notice must (i) specify the Bonds to be redeemed, the redemption date, the redemption price and the place or places where amounts due on such redemption must be payable (which must be the principal office of the Trustee) and if less than all of the Bonds are to be redeemed, the numbers of the Bonds and the portions of Bonds to be redeemed, and (ii) state that on the redemption date, the Bonds to be redeemed will cease to bear interest.

If moneys are on deposit in the Redemption Fund to pay the redemption price of the Bonds called for redemption and premium, if any, thereon on a redemption date, Bonds or portions thereof thus called and provided for as herein specified will not bear interest after such redemption date and will not be considered to be Outstanding or to have any other rights under this Indenture other than the right to receive payment. No payment of principal will be made by the Trustee on any Bonds or portions thereof called for redemption until such Bonds or portions thereof have been delivered for payment or cancellation or the Trustee has received the items required by Section 2.05 of this Indenture with respect to any mutilated, lost, stolen or destroyed Bonds.

If the Bonds are no longer held only by DTC and except as provided below, notice of redemption shall be given not less than 30 nor more than 45 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the registered owner of each Bond to be redeemed, at the address of such registered owner shown on the Bond Register, and a second notice of redemption shall be sent by certified mail, return receipt requested, at such address to the holder of any Bond who has not submitted his Bond to the Trustee for payment on or before the date 60 days following the date fixed for redemption of such Bond in each case stating: (i) the complete official caption of the issue of which the Bonds being redeemed are a part; (ii) the date of mailing of the notice of redemption; (iii) the date fixed for redemption; (iv) the redemption price or prices; (v) the numbers of the Bonds to be redeemed, by giving the individual certificate number of each Bond to be redeemed (or stating that all Bonds between two stated certificate numbers, both inclusive, are to be redeemed or that all of the Bonds of one or more maturities have been called for redemption); (vi) the CUSIP numbers of all Bonds being redeemed; (vii) in the case of a partial redemption of Bonds, the principal amount of each Bond being redeemed; (viii) the date of issue of the Bonds as originally issued; (ix) the rate or rates of interest borne by each Bond being redeemed; (x) the maturity date of each Bond being redeemed; (xi) the place or places where amounts due upon such redemption will be payable; (xii) the notice shall be void and of no effect in the event that the Trustee does not have sufficient money to pay the redemption price of the Bonds on the redemption date; and (xiii) the name, address, telephone number and contact person at the office of the Trustee with respect to such redemption. The notice shall require that such Bonds be surrendered at the operations office of the Trustee for redemption at the redemption price and shall state that further interest on such Bonds will not accrue from and after the redemption date. CUSIP number identification with appropriate dollar amounts for such CUSIP number also shall accompany all redemption payments, provided that no such notice of redemption shall be sent unless the Trustee has in its possession funds sufficient to pay the redemption price of the Bonds to be redeemed and that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of such Bonds.

Notice of such redemption also shall be sent by certified mail, return receipt requested, overnight delivery service or other secure means, postage prepaid, to any holder of \$1,000,000 or more in aggregate principal amount of Bonds to be redeemed, to certain municipal registered Securities Depositories (described below) which are known to the Trustee to be holding Bonds and to at least two of the national Information Services (described below) that disseminate securities redemption notices, when possible, at least five days prior to the mailing of notices required by the first paragraph above, but in any event at least 30 days, but not more than 45 days, prior to the redemption date, provided that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of such Bonds or give rise to any liability of the Trustee to the Developer, the Issuer or any holder of any of the Bonds.

Securities Depositories include The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax: (516) 227-4039 or 4190; Midwest Securities Trust Company, Capital Structures-Call Notification, 440 South LaSalle Street, Chicago, Illinois 60605, Fax: (312) 663-2343; Pacific Securities Depository Trust Company, Pacific and

Company, Post Office Box 7041, San Francisco, California 94120, Fax: (415) 393-4128; Philadelphia Depository Trust Company, Reorganization Division, 1900 Market Street, Philadelphia, Pennsylvania 19103, Attention: Bond Department, Fax: (215) 496-5058; any such other securities depositories as the Issuer may designate in writing to the Trustee.

Information Services include Financial Information, Inc., "Daily Called Bond Service," 10th Floor, 30 Montgomery Street, Jersey City, New Jersey 07302, Attention: Editor; Kenny Information Services, "Called Bond Service," 28th Floor, 55 Broad Street, New York, New York 10004; Moody's Investors Service "Municipal and Government," 8th Floor, 99 Church Street, New York, New York 10007, Attention: Municipal News Reports; and Standard and Poor's Corporation "Called Bond Record," 25 Broadway, New York, New York 10004; or any other such services as the Issuer may designate in writing to the Trustee.

Failure to give notice by mailing to the holder of any Bond designated for redemption or any defect in such notice shall not affect the validity of the proceedings for the redemption of any other Bond.

Section 3.06. Cancellation. All Bonds that have been surrendered for payment or redemption, any Bonds purchased from any fund established under this Indenture, shall be cancelled and destroyed by the Trustee and shall not be reissued.

Section 3.07. Payment Upon Redemption. Prior to each redemption date, the Trustee shall make provisions for the payment of Bonds to be redeemed on such date by setting aside and holding in trust an amount from the Bond Fund or otherwise received by the Trustee. Upon presentation and surrender of any such Bond at the operations office of the Trustee on or after the date fixed for redemption, the Trustee shall pay the principal of and premium, if any, on such Bond as of the applicable Regular Record Date; otherwise, interest shall be payable to the owner thereof as of the date fixed for redemption.

Section 3.08. Effect of Redemption. Notice of redemption having been given as provided in Section 3.05 hereof, the Bonds or portions thereof designated for redemption shall become due and payable on the date fixed for redemption and, unless the Issuer defaults in the payment of the principal thereof and premium, if any, thereon, or the accrued interest due with respect thereto, such Bond or portions thereof shall cease to bear interest from and after the date fixed for redemption whether or not such Bonds are presented and surrendered for payment on such date. If any Bond or portion thereof called for redemption is not so paid upon presentation and surrender thereof for redemption, such Bond or portion thereof shall continue to bear interest at the rate set forth thereon until paid or until due provision is made for the payment of same.

[End of Article III]

## ARTICLE IV

### FUNDS; INVESTMENTS

Section 4.01. Pledge and Assignment. Subject only to the provisions of this Indenture permitting the application thereof for or to the purposes and on the terms and conditions set forth herein, there are hereby pledged to secure the payment of the principal of, premium, if any, and interest on the Bonds in accordance with their terms and the provisions of this Indenture, all Net Revenues, and any other amounts held in any fund or account (except the Rebate Fund) established pursuant to this Indenture and all of the right, title and interest of the Issuer in each FHA debenture. Said pledge shall constitute a lien on and security interest in such assets and shall attach, be perfected and be valid and binding from and after delivery by the Trustee of the Bonds, without any physical delivery thereof or further act.

Section 4.02. Application of Bond Proceeds. From the proceeds of the Bonds and other moneys received from the Developer, the Trustee shall deposit (i) \$[ ] to the Bond Fund to pay the accrued interest on the Series B Bonds, (ii) \$380,000 to the Debt Service Reserve Fund representing the Debt Service Reserve Fund Requirement, (iii) \$246,750 to the Cost of Issuance Fund to be used in accordance with Section 4.11 hereof and (iv) \$3,829,352.50 with the Escrow Agent for deposit under the Escrow Agreement to pay the outstanding principal of, premium, if any, and accrued interest, if any, on the 1983 Bonds.

Section 4.03. Establishment of Funds. The following funds shall be established and maintained by the Trustee under this Indenture in trust for the benefit of the Owners of the Bonds (except that the Rebate Fund shall be in trust for the benefit of the United States of America):

- (a) the Bond Fund;
- (b) the Expense Fund;
- (c) the Debt Service Reserve Fund;
- (d) the Redemption Fund;
- (e) Cost of Issuance Fund; and
- (f) the Rebate Fund.

Except as provided in Section 4.01 hereof and except for prepayments of the Mortgage Note which shall be deposited into the Redemption Fund, all Net Revenues as received from the Mortgage Servicer shall be promptly deposited by the Trustee as set forth in Section 4.04 hereof.

Section 4.04. Application of Net Revenues. Upon receipt by the Trustee, all prepayments of the Mortgage Note shall be deposited to the Redemption Fund and used in

accordance with Section 4.09 hereof, and all other Net Revenues shall be distributed in the following order of priority:

- (a) Into the Bond Fund to pay Debt Service on the Bonds accruing on or before the next February 1 or August 1 as applicable in accordance with Section 4.06;
- (b) Into the Expense Fund, the amount, if any, needed to pay Qualified Expenses;
- (c) So long as the Trustee has not received FHA debentures, into the Debt Service Reserve Fund, an amount required to maintain the Debt Service Reserve Fund Requirement; and
- (d) Commencing February 1, 1994, and each February 1 and August 1 thereafter, into the Redemption Fund, the Excess Revenues.

Section 4.05. Application of Expense Fund. All amounts in the Expense Fund shall be used and withdrawn by the Trustee solely for the purpose of paying Qualified Expenses and to redeem Bonds as directed in Section 4.09. The Trustee shall deposit all investment earnings received from the investment of moneys in the Expense Fund into the Bond Fund.

Section 4.06. Bond Fund. (a) The Trustee shall deposit into the Bond Fund the amounts required by Sections 4.04, 4.07 and 4.08, and any other amounts received by the Trustee that are subject to the lien and pledge of the Indenture and not otherwise deposited. All moneys at any time deposited into the Bond Fund shall be held by the Trustee in trust for the benefit of the Owners at any time of the Bonds, and the Issuer shall have no beneficial right or interest in any of such moneys, except as provided in this Indenture.

(b) All amounts in the Bond Fund shall be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity pursuant to this Indenture), and paying the principal of the Bonds when due and payable.

(c) The Trustee shall, if and to the extent practicable, purchase Bonds for cancellation upon request of the Developer at such time, in such manner and at such price as may be specified by the Developer. The Trustee may so purchase Bonds with any moneys then held by the Trustee and available, in accordance with the terms hereof, for the redemption or purchase of Bonds in excess of any amount set aside for payment of Bonds called for redemption; provided, that any limitations or restrictions on such redemption or purchase contained in the Loan Agreement or this Indenture shall be complied with. The expenses of such purchase shall be deemed an expense of the Trustee to be reimbursed pursuant to Section 7.05 hereof. All Bonds so purchased by the Trustee shall be cancelled as provided in Section 3.06. Not less than 30 nor more than 45 days before the date of each special mandatory redemption, the Trustee shall call for redemption Bonds in an aggregate principal amount equal to such special mandatory redemption, reduced by the principal amount of Bonds purchased



pursuant to the foregoing provisions of this paragraph, and on the date such scheduled mandatory redemption is due the Trustee shall apply the money set aside therefor in the Bond Fund to the payment of the redemption price of the Bonds so called for redemption.

(d) All income from the investment of moneys in the Bond Fund shall be retained in the Bond Fund.

(e) If the amount in the Bond Fund is insufficient to pay principal of or interest on the Bonds when due, in accordance with Section 4.07 hereof, the Trustee shall transfer from the Debt Service Reserve Fund to the Bond Fund the amount of such deficiency.

Section 4.07. Debt Service Reserve Fund. On the Closing Date, the Issuer shall deposit with the Trustee an amount equal to \$380,000 which the Trustee shall deposit into the Debt Service Reserve Fund. Amounts shall be maintained within the Debt Service Reserve Fund at all times equal to or not less than the Debt Service Reserve Fund Requirement. The Trustee may transfer amounts in the Debt Service Reserve Fund to the Bond Fund to pay the principal of and interest on the Bonds only after written notice of default under the Mortgage Note has been given to HUD pursuant to Section 6.06(b) hereof. If moneys in the Debt Service Reserve Fund are used to pay any deficiency in the payment of the principal of or interest on the Bonds, the Trustee shall provide written notice thereof to the Developer and the Developer shall, pursuant to Section 3.1(b) of the Loan Agreement, be required to replenish the Debt Service Reserve Fund with the amount required to reinstate the balance of such fund to the amount of the Debt Service Reserve Requirement. At such time that all the moneys in the Debt Service Reserve Fund are invested in Investment Securities, the Debt Service Reserve Fund shall be valued monthly at par on the date of such valuation, and if the amount of moneys in the Debt Service Reserve Fund shall be less than the Debt Service Reserve Fund Requirement, the Trustee shall so notify the Issuer and the Developer. No later than 60 days after the date on which the Trustee provides notice to the Issuer and the Developer that the amount of moneys in the Debt Service Reserve Fund is less than the Debt Service Reserve Fund Requirement, the Developer may deposit sufficient moneys to ensure that the amount of moneys in the Debt Service Reserve Fund is not less than the Debt Service Reserve Fund Requirement.

In connection with any proposed partial redemption of Bonds, the Trustee shall compute the reduction in the Debt Service Reserve Fund Requirement which will result from such redemption and transfer any amount on deposit in the Debt Service Reserve Fund which will exceed the Debt Service Reserve Fund Requirement following such redemption into the Redemption Fund to be used in connection with such redemption; provided, however, that if the Loan is in default, such redemption pursuant to Section 3.01(d) will not occur until full FHA mortgage insurance proceeds have been received.

The Trustee shall deposit all investment earnings received from the investment of moneys in the Debt Service Reserve Fund into the Bond Fund; provided, however, that any earnings in excess of the average monthly yield on the Certificates shall be deposited into the Rebate Fund. Moneys held in the Debt Service Reserve Fund in excess of \$372,000 shall be invested in Investment Securities described in clause (7) of the definition thereof.

The moneys in the Debt Service Reserve Fund shall be used to pay the final principal payment due on the Series A Bonds.

Section 4.08. Investment of Moneys in Funds. Moneys in all funds established under this Indenture shall be invested in the Investment Agreement to the maximum extent permitted as provided in this Section 4.08 or, at the direction of the Developer, in Investment Securities paying interest and maturing or having a right to tender on seven days' notice not later than the dates on which it is estimated that such moneys will be required by the Trustee. Investments in all funds and accounts may be commingled for purposes of making investments, and all gains or losses shall be allocated pro rata. Moneys in all funds and accounts shall be invested under the Investment Agreement so long as the Investment Agreement is in effect. Any moneys in the funds and accounts established under this Indenture which are not the subject of the Investment Agreement shall be invested in Investment Securities maturing on a date which is the earlier of 90 days from the date such investment is made or the date such funds are needed.

All interest and other profit derived from the investment of funds pursuant to this Section 4.08 shall be deposited in the manner described in Sections 4.06, 4.07, 4.09 and 4.11, respectively.

Section 4.09. Redemption Fund. (a) Excess Revenues deposited into the Redemption Fund pursuant to Section 4.04(d) hereof shall be withdrawn to redeem Bonds in accordance with Section 3.01(b).

(b) Whenever amounts held in the Bond Fund, the Debt Service Reserve Fund, the Expense Fund and the Redemption Fund are sufficient to redeem, pursuant to Section 3.01(b) hereof, all Outstanding Bonds on the next date for which notice of redemption may be given pursuant to Section 3.05 and to pay all Qualified Expenses, all such amounts, net of Qualified Expenses, shall be transferred to the Redemption Fund and all such Investment Securities shall be liquidated to the extent necessary to provide moneys sufficient for such redemption. The Trustee shall deposit all investment earnings derived from amount deposited into the Redemption Fund into the Bond Fund.

Section 4.10. Rebate Fund. The Custodian shall notify the Trustee of the average interest rate on the Certificates by 2:00 p.m. on each Payment Date. The Trustee shall calculate the difference between the average interest rate on the Certificates and the actual interest paid on amounts held in the Debt Service Reserve Fund, and shall deposit such excess in the Rebate Fund in accordance with Section 4.07 hereof. The Rebate Fund shall be administered by the Trustee in accordance with the provisions of this Section 4.10 and the Tax Regulatory Agreement.

The Trustee shall engage for the account and at the expense of the Developer the Rebate Consultant to make the calculation(s) required by the Tax Regulatory Agreement on each Computation Date (as defined in the Tax Regulatory Agreement). The Trustee is required to make deposits from investment earnings held in the Bond Fund and attributable to the Debt Service Reserve Fund (other than moneys required to be invested under clause (7) of the

definition of Investment Securities pursuant to Section 4.07 hereof) and then from deposits made to the Trustee by the Depositor, on behalf of the Developer to the Rebate Fund and disbursements from the Rebate Fund in accordance with the Tax Regulatory Agreement and to invest the Rebate Fund pursuant to said Tax Regulatory Agreement and deposit income from such investments immediately upon receipt thereof in the Rebate Fund. All interest and other profit derived from such investments shall be retained within the Rebate Fund.

The Tax Regulatory Agreement shall be amended from time to time to accord with any regulations promulgated under or any amendment to Section 148(f) of the Code that affects the method of calculation of any rebate required to be paid to the United States, with the written approval of Bond Counsel. If such regulations under or amendments to Section 148(f) of the Code operate to void the rebate requirements contained therein, any and all provisions of this Indenture and the Tax Regulatory Agreement requiring amounts to be rebated to the United States shall cease to apply; provided, however, there is first delivered to the Trustee a written direction from the Issuer and an opinion of Bond Counsel to the effect that the discontinuance of the rebate payment by the Trustee on behalf of the Issuer to the United States will not adversely affect the exclusion of interest on the Series A Bonds from gross income for federal income tax purposes.

The Trustee may, but shall not be obligated to, advance funds to pay for the calculations required hereinabove. If the Trustee advances any funds hereunder, the Trustee shall be repaid at a rate equal to its then current prime lending rate plus one percent. The Trustee shall have no responsibility for the accuracy or completeness of such calculations or for any matter relating to arbitrage rebate other than selection, in good faith, of a certified public accountant or other professional and the Trustee's duty to follow the Tax Regulatory Agreement.

Section 4.11. Costs of Issuance Fund. On the Closing Date, the Issuer shall deposit with the Trustee an amount equal to \$246,750.00 which the Trustee shall deposit into the Costs of Issuance Fund. Upon receipt, the Trustee shall distribute all moneys deposited into the Cost of Issuance Fund for the purpose of paying all costs related to the issuance and sale of the Bonds in accordance with the written instructions set forth in Appendix A hereto. Any amounts remaining in the Costs of Issuance Fund 30 days after the Closing Date shall be transferred to the Developer.

Section 4.12. Nonpresentment of Bonds. In the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof or otherwise, if funds sufficient to pay such Bonds shall have been made available to the Trustee for the benefit of the holder thereof and shall have remained unclaimed for five years after such principal or interest has become due and payable, to the extent permitted by law and subject to receipt of indemnification satisfactory to the Trustee, such funds shall be paid to the Developer; and all liability of the Issuer and the Trustee to the holder thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged; provided, however, that the Trustee, before being required to make any such payment to the Developer, shall cause to be published once in a financial newspaper or journal of general national circulation, notice that such money remains unclaimed and that, after a date specified

therein, which shall not be less than 30 days nor more than 90 days from the date of such publication, any unclaimed balance of such money then remaining will be paid to the Developer. The cost of such publication shall be paid from the unclaimed funds so held by the Trustee and otherwise by the Developer. The obligation of the Trustee under this Section to pay any such funds to the Developer shall be subject to any provisions of law applicable to the Trustee or to such funds providing other requirements for disposition of unclaimed property.

Section 4.13. Final Balances. Provided the Trustee has not received notice from the Developer that the Collateral Agreement has been terminated, upon final payment of all principal of, premium, if any, and interest on the Bonds, and upon satisfaction of all claims against the Issuer and the Trustee hereunder, including the payment of all fees, charges and expenses of the Issuer, the Trustee and the Rebate Consultant that are properly due and payable hereunder, and any other fees and charges that are properly payable under Section 4.05 hereof, or upon the making of adequate provision for the payment of such amounts, as permitted hereby, all money remaining in all funds held under this Indenture (other than the Rebate Fund) shall be paid to the Depositor or following the termination of the Collateral Agreement, such amounts will be paid to the Developer.

Section 4.14. Procedure When Funds Are Sufficient to Pay All Bonds. (a) If at any time the amounts held by the Trustee in the funds established under this Article IV are sufficient to pay all principal of, redemption premium, if any, and interest on all Bonds then Outstanding on the next regular payment date thereof, together with any amounts due the Trustee, the Trustee shall notify the Issuer, the Mortgage Servicer and the Developer to that effect and thereafter the Trustee shall apply, subject to any applicable FHA requirements, the amounts in such funds first to the payment or prepayment of such principal and interest, and second, to the payment of any amounts due to itself, and the Trustee shall credit such payments to prepayment of the Mortgage Note and the Mortgage, in accordance with the prepayment provisions of the Mortgage Note and Mortgage, and the redemption provisions of the Bonds.

(b) Upon payment of the principal of, premium, if any, and interest on all Bonds Outstanding, together with any amounts due to the Trustee, the Trustee will cancel the Mortgage Note and deliver the same to the Developer and shall execute such instruments and take such other action as the Developer may request to satisfy and discharge the Mortgage.

[End of Article IV]

## ARTICLE V

### GENERAL COVENANTS AND REPRESENTATIONS

Section 5.01. Payment of Principal of and Interest on Bonds. The Issuer shall promptly pay or cause to be paid the principal of, premium, if any, and the interest on, every Bond issued hereunder according to the terms thereof, but shall be required to make such payment or cause such payment to be made only out of revenues available therefor under this Indenture.

Section 5.02. Instruments of Further Assurance. The Trustee shall maintain possession of and defend the Issuer's title to the Loan Agreement and the Loan for the benefit of the holders of the Bonds against the claims and demands of all Persons whomsoever, and the Issuer shall execute and the Trustee shall do, execute, acknowledge and deliver, such indentures supplemental hereto, and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Trustee all its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds paid solely from the Trust Estate. Any and all interest in property hereafter acquired that is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Issuer or the Trustee, become and be subject to the lien of this Indenture as fully and completely as though specifically described herein, but nothing contained in this sentence shall be deemed to modify or change the obligations of the Issuer under this Section.

Section 5.03. Corporate Existence and Maintenance of Properties. The Issuer shall use its best efforts to maintain and renew all its rights, powers, and privileges under the Act, and all rights, powers and privileges of the Commission under the Act, for so long as any Bonds are Outstanding, and shall comply with all valid and applicable laws, acts, rules, regulations, permits, orders, requirements and directions of any legislative, executive, administrative or judicial body.

Section 5.04. Recordation and Filing. The Trustee will cause financing statements with respect to the Trust Estate to be at all times filed in such manner and in such places, if any, as may be required by law in order to fully preserve and protect the rights of the Trustee hereunder and to perfect the security interest created by this Indenture in the Trust Estate. To the extent possible under applicable law, as in effect in the jurisdiction in which the Trust Estate is located, the Developer shall maintain the priority of the security interest herein created in the Trust Estate as a first lien thereon, and warrant, protect, preserve and defend its interest in the Trust Estate and the security interest of the Trustee therein and all rights of the Trustee under this Indenture against all actions, proceedings, claims and demands of all Persons, all paid for solely from the Trust Estate.

Section 5.05. Priority of Lien; No Modification of Security; No Additional Indebtedness. The Issuer shall duly observe and comply with all valid requirements of any municipal or governmental authority relative to any part of the financing contemplated hereby, and shall not

create or suffer to be created any lien or charge upon the Trust Estate hereunder prior to or on a parity with or inferior to the pledge, security interest and lien created hereby for the payment of the principal of, premium, if any, and interest on the Bonds.

The Issuer shall not, without the prior written consent of the Trustee, alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement that relates to or affects the security for the Bonds in accordance with the standards set forth in the Indenture.

Section 5.06. Reports and Other Notices. (a) The Trustee shall furnish, at a requesting Bondholder's expense, to any Bondholder who requests copies thereof and furnishes an address to which such reports and statements are to be sent, copies of (i) any reports furnished to the Trustee with regard to the Project (including, but not limited to, the most recent annual financial and management audits with respect to the Project and payment status reports with respect to the Mortgage Note) and (ii) annual statements of the Trustee with regard to fund balances, (b) The Trustee shall furnish at the expense of the Custodian and Remarketing Agent annual statements with regard to fund balances to the Custodian and Remarketing Agent and (c) The Trustee shall also furnish to the Rating Agency notice of any transfer of funds by the Trustee from the Debt Service Reserve Fund to the Bond Fund as a result of a default on the Loan and such additional information as is reasonably requested in order to maintain the rating on the Bonds, and shall provide a copy of such information to any Bondholder who owns \$1,000,000 or more in aggregate principal amount of Bonds and to any other Bondholder who requests such information.

Section 5.07. Tax Covenants. The Issuer covenants with the holders of the Series A Bonds that, notwithstanding any other provisions hereof or of any other instrument, and for so long as the Series A Bonds remain Outstanding, it will not use money on deposit in the funds and accounts created hereunder, whether or not such money was derived from the proceeds of the sale of the Bonds or from any other source, in any manner which would cause the Series A Bonds to be "arbitrage bonds" under Section 148 of the Code and the Regulations thereunder or otherwise cause or permit the interest on the Series A Bonds to become included in gross income for federal income tax purposes under the Code, and the Trustee agrees it will invest funds held under the Indenture in accordance with the terms of this Indenture and the Tax Regulatory Agreement. This covenant shall extend, throughout the term of the Series A Bonds, to all funds created hereunder and all money on deposit to the credit of any such fund.

The Issuer and the Trustee each covenant for the benefit of the holders of the Series A Bonds to honor their respective obligations hereunder relating to the tax-exempt status of the Series A Bonds.

Section 5.08. Application of Proceeds of Insurance. (a) Paragraph 7 of the Mortgage provides that amounts paid by any insurance company pursuant to a contract of insurance shall be paid to the mortgagee under the Mortgage, and, at its option, may be applied to the debt or released for the repairing or rebuilding of the Project. The Trustee (as mortgagee under the Mortgage) shall recover and hold all proceeds of hazard insurance payable to the Trustee; provided that the Developer shall have the sole right to settle any insurance claim. Pending the

application of such insurance proceeds pursuant to paragraph (b) below, such insurance proceeds shall be held by the Trustee (as mortgagee under the Mortgage) in a separate account (the "Insurance Account"). Any amounts deposited into the Insurance Account shall be invested in investments described in clause (5) of the definition of Investment Securities. No such amounts may be so applied or released without the prior approval of FHA. In the event of any damage to any property covered by insurance as required by Section 3.5 of the Loan Agreement, the Loan Agreement provides that the Developer shall immediately notify the Trustee and the Mortgage Servicer and prepare an estimate of the costs of repairing or replacing the damaged property and prepare plans and specifications therefor. If the fire and extended coverage insurance proceeds exceed \$25,000, the estimate of costs of repair or replacement and a copy of any such plans and specifications shall be filed with the Trustee, the Mortgage Servicer and FHA.

(b) If the insurance proceeds are to be applied to the repair or replacement of the property damaged or destroyed as determined by Section 5.08(d) hereof, and if such proceeds exceed \$50,000, the insurance proceeds and any income earned in the investment thereof shall be disbursed by the Trustee from the Insurance Account in accordance with the requisition procedures established in Section 4(A) under the Servicing Agreement. If such insurance proceeds are \$50,000 or less, such proceeds shall, at the request of the Developer, be paid to or upon the order of the Developer, which shall keep them separate from all other funds and use them only to pay the costs of repair or replacement of the property damaged or destroyed. The Loan Agreement provides that the Developer shall commence and diligently prosecute, or cause to be commenced and diligently prosecuted, the repair or replacement of the property damaged or destroyed in accordance with any plans and specifications approved by an independent architect and shall pay any amounts required for the completion of such repair or replacement if the insurance proceeds (including any income earned on the investment thereof) are insufficient therefor. If, following the completion of such repair or replacement, any moneys remain in the Insurance Account, such moneys shall, subject to any applicable FHA requirements, be paid to the Developer.

(c) If the insurance proceeds are to be credited to prepayment of the Mortgage Note and Mortgage, such proceeds and any income earned on the investment thereof shall then become part of the Trust Estate and shall be deposited in the Redemption Fund and applied to the redemption of Bonds pursuant to Section 3.01(c) hereof.

(d) If, within 90 days from the occurrence of such damage or destruction, the Developer and the Trustee agree in writing that the efficient utilization of the Project has not been impaired to such extent that the ability of the Developer, taking into account all financial resources of the Developer, to make the payments required under the Mortgage Note, Mortgage and Regulatory Agreement will have been materially adversely affected prior to the completion of the replacement or restoration of such part of the Project so damaged or destroyed, the proceeds of insurance received by reason of such occurrence (after deducting any reasonable expenses incurred by the Trustee or the Developer in collecting the same) shall, subject to any applicable FHA requirements, be applied to the repair or replacement of the property damaged or destroyed, or at the written option of the Developer, shall be credited as a prepayment of the

last installments of principal becoming due under the Mortgage Note, shall be deposited in the Redemption Fund and applied to the redemption of Bonds. If no such agreement shall be reached within such 90-day period, all respective insurance proceeds (after such deduction) shall, subject to any applicable FHA requirements, be credited to prepayment of the last installments of principal becoming due under the Mortgage Note and Mortgage.

Section 5.09. Mortgage and Regulatory Agreement Controlling. Notwithstanding any other provision of this Indenture, the Trustee and the Issuer agree for themselves, their successors and assigns, that should any conflict arise between this Indenture and the Mortgage or the Regulatory Agreement, the Mortgage or the Regulatory Agreement, as the case may be, shall be controlling.

Section 5.10. Application of Proceeds of Condemnation Compensation. (a) Paragraph 8 of the Mortgage provides that all proceeds of condemnation shall be assigned to the mortgagee under the Mortgage, to the extent of any indebtedness that remains unpaid. The Trustee (as mortgagee under the Mortgage) shall recover and hold all such proceeds of condemnation. Pending the application of such condemnation proceeds pursuant to paragraph (b) below, such condemnation proceeds shall be held by the Trustee (as mortgagee under the Mortgage) in a separate account (the "Condemnation Account"). No such amounts may be applied or released without the prior written approval of FHA. Upon the institution of any condemnation proceedings with respect to the Project, or any portion thereof, the Loan Agreement provides that the Developer shall immediately notify the Trustee and the Mortgage Servicer. The Developer shall have the sole right to settle any condemnation award.

(b) The Trustee as (mortgagee under the Mortgage) shall determine whether to apply the proceeds of condemnation to the prepayment of the last installments of principal becoming due under the Mortgage Note and Mortgage, and if such proceeds are applied to the prepayment of the Mortgage Note and Mortgage, such proceeds and any income earned on the investment thereof less the reasonable expenses of the Trustee and the Developer in collecting the same shall then become part of the Trust Estate, and shall be deposited in the Bond Fund and applied to the redemption of Bonds pursuant to Section 3.01(c) herein. Any such proceeds received from a taking of less than substantially all of the Project shall be applied as follows:

(1) if no part of the improvements included in the Project is taken or damaged, and the Trustee (as mortgagee under the Mortgage) in its discretion determines that the efficient utilization of the Project is not impaired by such taking, then all of the condemnation proceeds (after deducting the reasonable expenses of the Trustee and the Developer in collecting the same), and any income earned on the investment thereof, shall, subject to any applicable FHA requirements, be paid to the Developer;

(2) if any part of such improvements is taken or damaged, and if the Trustee (as mortgagee under the Mortgage) in its discretion determines that the repair, rebuilding, restoration, or rearrangement of the Project is not possible so as to restore the operational condition of the Project to substantially the condition existing immediately preceding such condemnation, then all of the condemnation proceeds (less the reasonable



expenses incurred by the Trustee or the Developer in collecting the same) and any income earned on the investment thereof, shall, subject to any applicable FHA requirements, be credited to the prepayment of the last installments of principal becoming due under the Mortgage Note and Mortgage, shall become part of the Trustee Estate, and shall be deposited into the Redemption Fund and applied to the redemption of Bonds as described in Section 3.01(c) hereof; and

(3) if any part of such improvements is taken or damaged, and if the Trustee (as mortgagee under the Mortgage) in its discretion determines that the repair, rebuilding, restoration or rearrangement of the Project is possible, then all of the condemnation proceeds (less the reasonable expenses incurred by the Trustee or the Developer in collecting the same) and any income earned on the investment thereof, shall, subject to any applicable FHA requirements, be disbursed to the Developer for the repair, rebuilding, restoration or rearrangement of the Project, insofar as may be possible, so as to restore the operational condition thereof to that existing immediately preceding such condemnation, such net condemnation proceeds to be disbursed by the Trustee from the Condemnation Account in accordance with the requisition procedure established under Section 4(A) of the Servicing Agreement; and in such event, the Loan Agreement provides that the Developer shall commence and diligently prosecute, or cause to be commenced and diligently prosecuted, such repair, rebuilding, restoration or rearrangement of the Project, and shall pay any amounts required for the completion thereof if the condemnation proceeds (including any income earned on the investment thereof) are insufficient therefor; and if, following the completion of such repair, rebuilding, restoration or rearrangement, any moneys remain in the Condemnation Account, such moneys shall, subject to any applicable FHA requirements, be paid to the Developer.

Section 5.11. Extension of Time for Payment of Interest, Etc. Prohibited. The Issuer shall not directly or indirectly extend or assent to the extension of the time for payment of any interest appertaining to, or claim for interest on, any of the Bonds and shall not directly or indirectly be a party to or approve any arrangement therefore by purchasing or funding or in any manner keeping alive any such claim for interest; and no claim for interest which in any way at or after maturity has been transferred or pledged apart from the Bond to which it relates or which shall in any manner have been kept alive after maturity by extension or by purchase thereof by or on behalf of the Issuer shall be entitled, in case of a default hereunder, to any benefit or security under this Trust Indenture except after the prior payment in full or the principal of all Bonds and of all coupons and claims for interest appertaining thereto not so transferred, pledged, kept alive or extended.

[End of Article V]

## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

Section 6.01. Events of Default. Each of the following shall be an "event of default" under this Indenture:

- (a) default in the due and punctual payment of any interest on any Bond; or
- (b) default in the due and punctual payment of the principal of or premium, if any, on any Bond whether at the stated maturity thereof, or on proceedings for redemption thereof, or on the maturity thereof by declaration; or
- (c) if the Issuer files a petition under Chapter IX of the Bankruptcy Code; or
- (d) default, and the continuation thereof for a period of 30 days following notice to the Trustee, in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer in this Indenture or in the Bonds after written notice to the Issuer from the Trustee or the registered owners of at least 25 % of the Bonds at such time specifying such default and requiring the same to be remedied.

Section 6.02. Acceleration; Other Remedies. Upon the occurrence of an event of default as provided in Section 6.01(a) or (b), the Trustee may, and upon the written request of the holders of not less than 25% of the Bonds Outstanding must, by notice in writing delivered to the Issuer, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. There shall be no acceleration upon the occurrence of an event of default as described in Section 6.01(c) or (d) hereof.

If at any time after the Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Issuer or the Developer shall pay to or deposit with the Trustee a sum sufficient to pay all principal of the Bonds then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) upon all the Bonds then due, with interest at the rate borne by the Bonds on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable expenses of the Trustee shall have been made good or cured or adequate provisions shall have been made therefor, and all other defaults hereunder have been made good or cured or waived in writing by owners of a 100% of the Bonds, then and in every case, the Trustee on behalf of the holders of all the Bonds shall rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the happening and continuance of an event of default, the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the holders of all Bonds, may also proceed to protect and enforce any rights of the Trustee and, to the full extent that the holders of such Bonds themselves might do, the rights of such Bondholders under the laws of the State or under this Indenture by such of the following remedies as the Trustee shall deem most effectual to protect and enforce such rights.

(1) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, premium, if any, or interest on the Bonds then Outstanding, or for the specific performance of any covenant or agreement contained herein or in the Loan Agreement, the Mortgage Note, or the Mortgage, or to require the Issuer to carry out any other covenant or agreement with Bondholders and to perform its duties under the Act;

(2) by pursuing any available remedies under the Loan Agreement, the Mortgage Note or the Mortgage;

(3) in connection with an event of default under Section 6.01(a) or (b), by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

(4) by action or suit in equity, to enjoin any acts or things that may be unlawful or in violation of the rights of the Holders of Bonds.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Bondholders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or under the Loan Agreement, the Mortgage Note or the Mortgage, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default or event of default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any default or event of default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

Section 6.03. Rights of Bondholders. If any event of default shall have occurred and if requested in writing so to do by the owners of not less than 25% of the Bonds Outstanding with respect to which there is a default, and if indemnified as provided herein, the Trustee shall be obliged to exercise one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interest of the Bondholders. Subject to the provisions of Section 6.07, the holders of a majority of the Bonds shall have the right at any time, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver

or any other proceedings hereunder, in accordance with the provisions of law and of this Indenture.

Section 6.04. Waiver by Issuer. Upon the occurrence of an event of default, to the extent that such right may then lawfully be waived, neither the Issuer nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereinafter in force, in order to prevent or hinder the enforcement of the Indenture; and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisement and redemption to which it may be entitled under the laws of the State and the United States.

Section 6.05. Application of Money. Any money received by the Trustee in the event of a default pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in the case of the distribution of such money on account of principal or premium, if any, or interest, upon presentation of Bonds, and notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

(a) to the payment of all amounts then due on the Bonds for principal, premium, if any, and interest, in respect of which or for the benefit of which money has been collected (other than Bonds which have matured or otherwise become payable prior to such event of default and money for the payment of which is held in the Bond Fund), ratably without preference or priority of any kind, according to the amounts due and payable on such Bonds, for principal, premium, if any, and interest respectively; and

(b) to the payment of all amounts due the Trustee under Section 7.05.

Section 6.06. Remedies Under Mortgage and FHA Mortgage Insurance. (a) If the Developer fails to make any payment required under the Mortgage Note or Mortgage and such failure continues for a period of 30 days, or if the unpaid principal balance of the Mortgage Note shall have been accelerated as a result of any nonmonetary default by the Developer under the terms of the Mortgage; or if FHA shall have requested and the Trustee shall have declared, such an acceleration upon a default by the Developer under the Regulatory Agreement, then the Trustee shall immediately give written notice of such default to the Holders of all Bonds in the same manner prescribed in Article III hereof for notices of redemption.

(b) Subject to the foregoing, upon such payment default or performance default, the Trustee shall:

(i) immediately upon becoming entitled to do so, and not later than 45 days after a failure by the Developer to make any payment under the Mortgage Note:

(A) Subject to Subsection (ii) below, give written notice of Intention and Election to Assign (HUD Form) in writing to HUD Central (with a copy to the applicable HUD area office and Rating Agency) which notice shall:

(1) state that the Mortgage Loan was funded in part with the proceeds of tax-exempt bonds rated by the Rating Agency entitled to priority processing and expedited processing procedures by FHA;

(2) provide a schedule of the maximum payments of Debt Service with respect to the Bonds indicating funds available to make such payments; and

(3) request forms and instructions relating to assignment of the Mortgage and shall attach to such request a copy of the letter from HUD to Standard & Poor's Corporation dated June 23, 1987;

(B) give notice, in writing, to the applicable HUD area office of the occurrence of the default entitling the Trustee to claim FHA mortgage insurance benefits.

(ii) within five days of receiving the forms and instructions described in (i)(A)(3) above, the Trustee shall submit such documentation as required by HUD to HUD's Office of General Counsel;

(iii) as soon as practicable after filing its election to assign with FHA, but not later than 30 days thereafter (or any other period required by FHA), the Trustee shall:

(A) assign the Mortgage, the Mortgage Note, and such other necessary documents as shall be required by FHA directly to FHA, giving all required notices,

(B) record the assignment of the Mortgage Note to FHA in accordance with instruction from HUD Central, and

(C) submit to HUD Central the Application (FHA Form) for mortgage insurance benefits and request payment of the mortgage insurance benefits in cash;

(iv) as soon as possible, but in no event later than 30 days after recordation and assignment of the Mortgage, submit fiscal documentation required by HUD's Office of Finance and Accounting and complete and submit all outstanding legal documents.

(c) Subject to Subsection (a) above, the Trustee shall not consent to any adjustments or revisions of the terms of the Mortgage Loan or the contract of FHA Mortgage Insurance, or take, or fail to take, any action in the event of a default, which would cause there to be insufficient money available for the scheduled payment of principal and interest on the Bonds, or for the payment of the Trustee's Fees.

(d) In the event that FHA shall make payment of a claim for FHA mortgage insurance in cash, whether in whole or in part, the Trustee shall apply such cash proceeds as provided in Section 3.01(d) hereof.

(e) In the event that FHA shall make payment of a claim for FHA mortgage insurance in FHA debentures, whether in whole or in part, the Trustee shall apply such debentures as provided in Section 3.01(e) hereof, and give notice to the holders of all Bonds Outstanding in the same manner prescribed in Article III hereof for notices of redemption that the Trustee has received such FHA debentures. Except as provided herein, the Trustee shall hold such FHA debentures to their maturity, or until the principal of and interest on all Bonds Outstanding have been paid, whichever is the earlier, and shall apply the principal thereof to the payment of the principal of the Bonds Outstanding; provided, however, that at the written request of the Holders of one hundred percent (100%) in aggregate principal amount of the Bonds Outstanding, or (in the absence of such Bondholder request), at the request of the Developer, that the proceeds of the sale of the FHA debentures and all other investments of amounts deposited in the funds and accounts established hereunder would produce sufficient funds together with all immediately available funds held by the Trustee hereunder to pay the principal of and interest on all Bonds Outstanding, the Trustee shall sell such debentures and other investments, deposit the proceeds so obtained and such other immediately available funds in the Redemption Fund and apply the same as provided in Section hereof.

Section 6.07. Application of FHA Mortgage Insurance Benefits. (a) Moneys in the Bond Fund and Debt Service Reserve Fund shall be deemed held for the benefit of the holders of the Bonds, and shall not be subject to such rights of FHA.

(b) Upon receipt of the final payment of mortgage insurance proceeds from FHA, the Trustee shall calculate the "Funds Available for Extraordinary Redemption," being the sum of: (i) all mortgage insurance proceeds paid in cash, including accrued interest on FHA debentures to their date of delivery ("Cash Proceeds"); (ii) all uninvested moneys held in all funds and accounts established under this Indenture; and (iii) the amount which could be realized from the sale of all investments (not including FHA debentures) deposited to the credit of all funds and accounts established under this Indenture ("Investments on Hand"). In the event that all mortgage insurance proceeds are paid by FHA in cash and the Funds Available for Extraordinary Redemption are sufficient to redeem all Bonds Outstanding pursuant to extraordinary redemption on the first practicable date such redemption can be made in accordance with Article III hereof, the Trustee shall sell all Investments on Hand and deposit the proceeds of sale, together with all Cash Proceeds and Cash on Hand in the Redemption Fund and apply such amounts to the Extraordinary Redemption of Bonds. In the event that mortgage insurance benefits are paid by FHA in part in FHA debentures and in part in cash, and the Funds Available for Extraordinary Redemption (if applied on the first practicable date to Extraordinary Redemption of Bonds) and the income and principal on the FHA debentures would be sufficient to pay when due the interest on, and to pay at or prior to maturity the principal of, all Bonds Outstanding, then the Trustee shall sell all Investments on Hand and deposit the proceeds of sale, together with all Cash Proceeds and Cash on Hand in the Redemption Fund and apply such amounts to the Extraordinary Redemption of Bonds.

(c) If the mortgage insurance proceeds, Cash on Hand and the proceeds which could be realized from the sale of Investments on Hand are not sufficient to pay the principal or redemption price of and interest on all Bonds Outstanding in the manner described in paragraph (b) above, then the FHA debentures shall be sold and payments thereon shall be deposited into the Bond Fund when received.

Section 6.08. No Obligation of FHA. No provision of this Indenture shall impose any obligation upon FHA, confer upon any party hereto, or to any Bondholder any right against FHA, or relieve FHA of any obligation under the FHA mortgage insurance.

Section 6.09. Remedies Vested in Trustee. All rights of action, including the right to file proof of claims, under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any holders of the Bonds, and any recovery of judgment shall be for the benefit as provided herein of the holders of the Outstanding Bonds.

Section 6.10. Remedies of Bondholders. No holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default shall have occurred of which the Trustee shall have been notified as provided herein; (b) such default shall have become an event of default; (c) the holders of at least 25 % of the Bonds Outstanding shall have made written request to the Trustee and shall have offered reasonable opportunity to the Trustee either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (d) such holders shall have offered to the Trustee indemnity as provided herein; and (e) the Trustee shall within 60 days thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding; it being understood and intended that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture or the rights of any other holders of Bonds or to obtain priority or preference over any other holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all holders of Bonds with respect to which there is a default. Nothing contained in this Indenture shall, however, affect or impair the right of any Bondholder to enforce the payment of the principal of, the premium, if any, and interest on any Bond at the maturity thereof or the obligation of the Issuer to pay the principal of, premium, if any, and interest on the Bonds issued hereunder to the respective holders thereof, at the time, in the place, from the sources and in the manner expressed in said Bonds.

Section 6.11. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder with respect to the Trust Estate herein

conveyed, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 6.12. Waivers of Events of Default. The Trustee shall waive any event of default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds upon the written request of the holders of a majority of the Bonds Outstanding with respect to which there is a default; provided, however, that there shall not be waived (a) any event of default in the payment of the principal of any Bonds at the date of maturity specified therein, or upon proceedings for mandatory redemption, (b) any default in the payment when due of the interest or premium on any such Bonds, unless prior to such waiver or rescission all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such default shall have occurred, on overdue installments of interest or all arrears of payments of principal or premium, if any, when due (whether at the stated maturity thereof or upon proceedings for mandatory redemption) as the case may be, and all expenses of the Trustee (including attorney's fees), in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

Section 6.13. Opportunity to Cure Default Under Mortgage Note. Prior to the date of recordation of assignment of a Mortgage to FHA pursuant to Section 6.06 hereof and prior to the date of notice of redemption of the Bonds pursuant to Section 3.01 hereof, the Trustee may allow a Developer to cure any default under the Mortgage Note and Mortgage but only subject to the following conditions and provided that during the period the Trustee is allowing such Developer to cure, it shall continue to pursue benefits under the FHA mortgage insurance.

(1) The Developer must pay to the Trustee any overdue payments of principal of and interest on the Mortgage Note.

(2) The Developer must cure any non-monetary defaults under the Mortgage, the Indenture and any related documents to the satisfaction of the Trustee.

(3) If any money has been withdrawn from the Trust Estate to be used in connection with the default, the Developer must:

(a) redeposit under the Trust Estate an amount at least equal to the amount withdrawn, or

(b) provide the Trustee with cash or a letter of credit in such form acceptable to the Trustee, together with written confirmation from the Rating Agency that such letter of credit would not adversely affect the Rating Agency's rating on the Bonds that (i) provides a source for the payment of the principal of and interest on the Bonds and



(ii) is in an amount at least equal to the amount withdrawn from the Trust Estate plus an amount equal to the interest that would have been earned on the withdrawn amount had it been invested at the rate of 6.20% per annum, and

(c) provide to the Trustee an unqualified opinion of nationally recognized bankruptcy counsel, satisfactory to the Trustee (and approved by the Trustee's counsel) with respect to the deposit specified in (a) or (b) above and which opinion (i) if the deposit is in the form of a letter of credit (which letter of credit must be issued or confirmed by a bank whose unsecured long-term debt is rated by the Rating Agency at least as high as the rating then in effect on the Bonds) states that the letter of credit is enforceable against the bank or (ii) if the deposit is in any other form states that such amounts are exempt from claims of creditors of the provider of such funds pursuant to 11 U.S.C. Sections 362(a) and 547(b).

(4) The Developer must deposit or cause to be deposited with the Trustee an amount equal to any loss of investment income resulting from the failure to make any Mortgage Note payments when due and provide to the Trustee an opinion of counsel of the type described in paragraph (3)(c) above with respect thereto.

(5) The Trustee must receive written confirmation from FHA that the cure of any such default and the withdrawal of any notice of assignment of the Mortgage Note and Mortgage that had been given under Section 6.06 will not adversely affect the FHA mortgage insurance on the Mortgage Note or be construed as a waiver or reduction thereof.

(6) Cash flow projections, prepared by a qualified independent third party, shall be delivered to the Trustee which show that after the action taken under (3) above, the timely payment of the principal of and interest on the Bonds and the Qualified Expenses required to be paid from the Expense Fund will not be adversely affected.

(7) The Trustee shall not allow the cure of the default if it would adversely affect (i) the timely payment of debt service on the Bonds or (ii) the exclusion of interest on the Bonds from gross income for federal income tax purposes.

(8) The Developer shall pay all expenses of the Trustee, the Issuer, and the Mortgage Servicer, extraordinary or otherwise (and including, without limitation, any legal fees and expenses) incurred in connection with such default and provide to the Trustee an opinion of counsel of the type described in paragraph 3(c) above with respect thereto.

The Trustee shall not allow a cure of a default under the Mortgage Note until it shall have received a written confirmation from the Rating Agency that such cure shall not adversely affect the rating on the Bonds. The allowance by the Trustee of any cure upon a default under the Mortgage Note will not affect any subsequent default proceedings with respect to the FHA mortgage insurance or any claims thereunder.

[End of Article VI]

## ARTICLE VII

### THE TRUSTEE

Section 7.01. Certain Duties and Responsibilities. (a) Except during the continuance of an event of default:

(1) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee.

(b) In case an event of default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(1) This subsection (c) shall not be construed to limit the effect of subsection (a) of this Section;

(2) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(3) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with directions received pursuant to Sections 6.03, 6.10 or 6.13 or the direction of the holders of a majority of the Bonds relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(4) In the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates, reports or opinions, or other instruments furnished to the Trustee by a proper party.

(d) No provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

(f) The Trustee shall not be required to furnish any bond or surety for the performance of its obligations hereunder.

(g) The Trustee is hereby authorized and directed to execute and deliver this Indenture and the Investment Agreement, and further, is hereby directed to execute, deliver and carry out its obligations under the Letter of Representation.

Section 7.02. Notice of Default. Within 90 days after the Trustee is deemed to have notice under Section 7.03(j) of any default hereunder, the Trustee shall transmit by registered or certified mail at the expense of the Developer, to the holders of all Bonds then Outstanding, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Bond when due, the Trustee shall be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the interests of the holders of the Bonds. For the purpose of this Section, the term "default" means any event that is, or after notice or lapse of time or both would become, an event of default.

Section 7.03. Certain Rights of Trustee. Except as otherwise provided in Section 10.01:

(a) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or order of the Issuer shall be sufficiently evidenced by a request or an order signed by an authorized representative of the Issuer and any resolution of the Issuer may be sufficiently evidenced by a certificate of the City Clerk of the Issuer;

(c) any notice, request, direction, election, order or demand of the Developer mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Developer by any general partner of the Developer (unless other evidence in respect thereof be herein specifically prescribed);

(d) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any

action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a certificate signed by an authorized representative of the Issuer;

(e) the Trustee may consult with counsel, architects and engineers and other experts, and the written advice of such counsel, architects or engineers and other experts shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(f) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the holders of the Bonds pursuant to this Indenture, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction;

(g) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer and the Developer, personally or by agent or attorney;

(h) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys but the Trustee shall be responsible for any misconduct or negligence on the part of such agent or attorney;

(i) notwithstanding anything to the contrary contained in this Indenture, the Trustee shall have the right, but shall not be required, to demand, with respect to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to those matters required by the terms hereof as a condition of such action by the Trustee, all as is deemed desirable by the Trustee for the purpose of establishing the right of the Issuer or the Developer, as the case may be, to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee;

(j) the Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure in any of the payments to the Trustee required to be made by Article IV unless the Trustee shall be specifically notified in writing of such default by the Issuer or the holders of at least 25 % of the Bonds or shall otherwise have actual knowledge thereof;

(k) all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the corporate trust office of the Trustee at its Notice Address; and

(l) the Trustee may in its individual or any other capacity become the owner or pledgee of the Bonds with the same rights as it would have if it were not the Trustee.

Section 7.04. Money Held in Trust. Money held by the Trustee shall be held separately in trust, segregated from other funds of the Trustee.

Section 7.05. Trustee's Fees and Expenses; Indemnification. (a) On each February 1 and August 1, the Trustee shall be paid an amount equal to its Qualified Expenses. To the extent not otherwise paid to the Trustee hereunder, such Qualified Expenses shall be paid to the Trustee after such dates by the Developer.

(b) The Issuer shall indemnify the Trustee and its officers, directors and employees, and hold them harmless against any liabilities, losses and expenses, that it may incur or arising out of or in connection with the acceptance of its duties under, or administration of the Trust Estate in accordance with the terms of the Indenture, including reasonable costs and expenses of counsel to defend themselves against any claim or liability in connection with the exercise or performance of any of their powers or duties hereunder; provided, however, that except with respect to the Expense Fund, the Trustee shall not look to any moneys in the Trust Estate for payment of any fees, expenses, compensation or indemnity.

Section 7.06. Successor Trustee. (a) Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Trustee hereunder and vested with all the title to the whole property or Trust Estate and all the trusts, powers, discretion, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

(b) Any corporation into which any trustee hereunder may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which any Trustee hereunder shall be a party, shall be the successor trustee under this Indenture, without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding, provided that such Issuer shall meet the requirements of Section 7.10.

Section 7.07. Resignation by the Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 60 days' written notice by registered or certified mail to the Issuer and to each registered owner of the Bonds then Outstanding; provided that no such resignation shall take effect until a successor Trustee shall have been

appointed and shall have accepted such appointment as provided in Sections 7.09 and 7.10. If no successor Trustee shall have been appointed and have accepted appointment within 60 days following the giving of all required notices of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

Section 7.08. Removal of Trustee. Any Trustee hereunder may be removed at any time by an instrument appointing a successor meeting the requirements of Section 7.10, executed by the holders of a majority in aggregate principal amount of the Bonds then Outstanding, filed with the Trustee and the Issuer.

Section 7.09. Appointment of Successor Trustee. If the Trustee or any successor trustee resigns or is removed or dissolved, or if its property or business is taken under the control of any state or federal court or administrative body, a vacancy shall forthwith exist in the office of the Trustee, and the Issuer shall appoint a successor, meeting the requirements of Section 7.10, but only upon the receipt of written approval by FHA of the appointment, and shall mail notice of such appointment to the holders of the Bonds, as the case may be. If the Issuer fails to make such appointment, the holders of a majority in principal amount of the Bonds then Outstanding may do so, but only upon the receipt of written approval by FHA of the appointment.

Section 7.10. Qualification of Successor. A successor trustee shall be a state or national bank with trust powers or a bank and trust company or a trust company having capital and surplus of at least \$10,000,000, shall be a mortgagee approved by FHA, and shall immediately upon and as a condition of becoming trustee hereunder, be assigned the Mortgage Note and Mortgage and the Loan Agreement.

Section 7.11. Instruments of Succession. Any successor trustee shall execute, acknowledge and deliver to the Issuer an instrument accepting such appointment hereunder; and thereupon such successor trustee, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein. The Trustee herein shall assign the Mortgage Note and Mortgage and the Loan Agreement to such successor trustee, without recourse or warranty (express or implied), and shall pay over to the successor trustee all moneys held by it hereunder; and the Trustee herein and the Trustee shall execute and deliver an instrument transferring to the successor trustee all the estates, properties, rights, powers and trusts hereunder of the Trustee herein.

Section 7.12. Enforcement of the Mortgage Note, Mortgage and Servicing Agreement; Amendments to Mortgage Note and Mortgage. (a) The Trustee shall maintain at all times its status in good standing as an FHA-approved mortgagee.

(b) The Trustee shall enforce the full and punctual performance by the Developer of all covenants, agreements and obligations on the part of the Developer to be performed under the Mortgage Note, Mortgage, Regulatory Agreement, Loan Agreement and Servicing Agreement, and the full and punctual performance by the Mortgage Servicer of all covenants,

agreements and obligations on the part of the Mortgage Servicer to be performed under the Servicing Agreement. In the event of a termination of the Servicing Agreement, or a resignation by the Mortgage Servicer, the Trustee shall use its best efforts to arrange for the appointment of a substitute Mortgage Servicer which is an FHA-approved mortgagee with experience in servicing FHA-insured loans for multifamily housing or health care projects; and pending the appointment of a substitute Mortgage Servicer, the Trustee shall perform all duties to be performed by the Mortgage Servicer under the Servicing Agreement.

(c) Except as may be permitted in this Indenture, the Trustee shall not consent to any amendment to the Mortgage Note, Mortgage or Loan Agreement unless the Trustee has received the prior written consent of FHA and unless the Trustee determines that such amendment will not adversely affect the security for the Bonds and will not adversely affect the sufficiency of payments under the Mortgage Note and Mortgage (including FHA insurance benefits) for payment of debt service on the Bonds, taking into account income from the Debt Service Reserve Fund.

Section 7.13. Authenticating Agent. (a) From time to time, the Trustee may, in its sole discretion, appoint and at its own cost compensate one or more authenticating agents with respect to the Bonds which shall be authorized to act on behalf of the Trustee in authenticating Bonds in connection with the issuance, delivery and registration of transfer or exchange of the Bonds. Wherever reference is made in this Indenture to the authentication of Bonds by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication on behalf of the Trustee by an authenticating agent and a certificate of authentication executed on behalf of the Trustee by an authenticating agent. Each authenticating agent must be an institution meeting the requirements of Section 7.10 hereof.

(b) Any institution meeting the requirements of Section 7.10 hereof succeeding to the corporate agency business of an authenticating agent shall continue to be an authenticating agent without the execution or filing of any document or any further act on the part of the Trustee or such authenticating agent.

(c) An authenticating agent may at any time resign by giving written notice of resignation to the Trustee. The Trustee may at any time terminate the agency of an authenticating agent by giving notice of termination to such authenticating agent. Upon receiving such a notice of resignation or upon such a termination, or in case at any time an authenticating agent shall cease to be acceptable to the Trustee, the Trustee promptly may appoint a successor authenticating agent. Any successor authenticating agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an authenticating agent.

(d) The provisions of Sections 7.01, 7.03 and 7.17 hereof shall be applicable to any authenticating agent (other than for its authentication of the Bonds).

(e) Pursuant to an appointment made under this Section, in lieu of the Trustee's execution by manual signature, the Bonds may be executed by the facsimile signature of the

Trustee and have endorsed thereon a certificate of authentication in substantially the following form:

This is one of the Bonds described in the within-mentioned Trust Indenture.

Name of Authenticating Agent

as Authenticating Agent for the Trustee  
by

Authorized Signatory

(f) Any Bond authenticated in accordance with the provisions of Section 7.13(e) hereof shall be dated the date of endorsement of such authentication.

Section 7.14. Execution of Documents. The Trustee is hereby specifically authorized and directed to perform and carry out the following duties:

(a) execute and deliver the Tax Regulatory Agreement, the Financing Statements described in Section 5.04 hereof and the Bonds;

(b) perform any and all other duties as may be authorized in writing by holders of not less than 51 % of the aggregate principal amount of the Bonds outstanding.

Section 7.15. Trustee Not Liable for Bonds. The recitals contained herein and in the Bonds (other than the certification of authentication on the Bonds) shall be taken as the statements of the Issuer or the Developer, as the case may be, and the Trustee assumes no responsibility for the correctness of such recitals. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Bonds (except that the Bonds shall be duly and validly authenticated by it) or of the Mortgage, the Mortgage Note or any related document. The Trustee shall not be accountable for the use or application by the Issuer or the Developer of any of the Bonds or of the proceeds of such Bonds, or for the use or application of any funds paid to the Issuer or the Developer in respect of the Mortgage or deposited in or withdrawn from the Trust Estate by the Issuer or the Developer. Subject to Section 7.12(b) hereof, the Trustee shall have no responsibility or liability for the existence or validity of the Mortgage, the validity of the transfer of the Mortgage to the Trust Estate or of any intervening assignment, or the review of the Mortgage (it being understood that the Trustee has not reviewed and does not intend to review such matters).

Except for such liability as is finally determined to have resulted from the Trustee's gross negligence or bad faith, (i) no recourse shall be had for any claim based on any provision of this Indenture or the Bonds against the Trustee in its individual capacity, (ii) the Trustee shall not have any personal obligation, liability or duty whatsoever to any holder of a Bond or any other person with respect to any such claim and (iii) any such claim shall be asserted solely against the Trust.



Section 7.16. Limitation of Liability. No personal liability will attach to the Trustee, and the Trustee shall have no liability except as expressly provided in this Indenture. In all contractual dealings and undertakings by the Trustee on behalf of the Trust, the Trustee shall include a written notice to the following effect:

The liability of the Trust and the Trustee with respect to the transactions contemplated herein and the obligations of the parties arising hereunder are limited to the assets of the Trust, and the Trustee shall have no personal liability with respect thereto in contract, tort or otherwise as partners or under any other legal theory or arrangement. All persons dealing with the Trustee expressly acknowledge that the Trustee has no personal liability or any liability beyond the assets of the Trust.

All contracts and written instruments of the Trustee must incorporate the terms of this Agreement by reference and give notice as to the availability of a copy of this Indenture.

Section 7.17. Trustee May Own Bonds. The Trustee in its individual capacity or any other capacity may become the owner or pledgee of Bonds with the same rights as it would have if it were not the Trustee.

Section 7.18. Trustee as FHA-Approved Mortgagee; Servicing the Mortgage Loans; Mortgage Servicing Agreement. The Trustee shall, under applicable FHA regulations, be approved by FHA to act as mortgagee for any FHA-insured indebtedness at all times during which the Mortgage Loan is outstanding.

There shall at all times be an FHA-approved mortgage banking company or financial institution not affiliated with the Owner to service the Mortgage Loan, as described below. So long as any Bonds remain Outstanding, the Mortgage Loan shall be serviced in accordance with acceptable practices of prudent lending institutions and all applicable provisions of the National Housing Act and all applicable rules and regulations thereunder.

In the event the agreement with the Mortgage Servicer is terminated, the Trustee shall engage, at the direction of the Issuer, a qualified successor Mortgage Servicer to service the Mortgage Loan in accordance with the provisions of this Section; provided, however, that the Trustee shall service the Mortgage Loan itself while such a successor servicer is being selected. In the event the Trustee subsequently engages another company or institution to service the Mortgage Loan, the Trustee shall enter into a servicing agreement with such company or institution. All such servicing agreements, whether with the Mortgage Servicer or any other subsequent company, shall be satisfactory to the Issuer.

[End of Article VII]

## ARTICLE VIII

### SUPPLEMENTAL INDENTURES

Section 8.01. Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee may, without the consent of or notice to any of the Bondholders, enter into a Supplemental Indenture as shall not be inconsistent with the terms and provisions hereof or materially adverse to the interests of the holders of the Bonds for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Indenture;
- (b) to subject to the lien and pledge of this Indenture additional revenues, properties or collateral;
- (c) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or any of them;
- (d) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or under any state securities laws;
- (e) to permit the Trustee to comply with any obligations imposed upon it by law;
- (f) to achieve compliance of this Indenture with any applicable federal securities or tax laws;
- (g) to maintain the exclusion of interest on the Series A Bonds from gross income for federal income tax purposes;
- (h) to improve or maintain the rating on the Bonds; and
- (i) in connection with any other change in this Indenture that, in the judgment of the Trustee, is not to the prejudice of the Trustee or the Bondholders.

Section 8.02. Supplemental Indentures Requiring Consent of Bondholders. The Issuer and the Trustee may, with the consent of the holders of not less than two-thirds of the Bonds, from time to time, enter into Supplemental Indentures for the purpose of modifying, altering, amending, adding to or rescinding any of the terms or provisions of Section 8.01 contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing in this Section contained shall permit, or be construed as permitting, without the consent of the owners of all

the Bonds who would be affected thereby (a) an extension of the Stated Maturity or a reduction in the principal amount or reduction in the rate, or extension of time of payment of interest on, or reduction of any premium payable on the redemption of, any Bonds, without the consent of the holders of all of the Bonds Outstanding affected hereby; (b) the creation of any lien prior to or on a parity with the lien of this Indenture; (c) a reduction in the amount of the Bonds whose consent is required for the execution of such supplemental indentures, without the consent of the holders of all the Bonds at the time Outstanding which would be affected by the action to be taken; (d) the modification of the rights, duties or immunities of the Trustee without the consent of the Trustee; (e) a privilege or priority of any Bond over any other Bonds; (f) any action that, in the opinion of Bond Counsel, may result in the loss of the exclusion of interest on the Series A Bonds from gross income for federal income tax purposes; or (g) any change in Section 5.11.

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed, postage prepaid, to all Bondholders. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the corporate trust office of the Trustee for inspection by all Bondholders. If, within 60 days or such longer period as shall be prescribed by the Issuer following the mailing of such notice, the holders of not less than two-thirds of the Bonds at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as is in this Section permitted and provided, this Indenture shall be deemed to be modified and amended in accordance therewith. The Trustee shall not be obligated to enter into a supplemental indenture unless it shall have received an opinion of counsel, upon which it shall rely, as conclusive evidence that execution and delivery of a supplemental indenture has been effected in compliance with the provisions of this Article.

**Section 8.03. Supplemental Indenture With Respect to Custody Agreement Termination.**  
If the Custody Agreement is automatically terminated pursuant to subsections (i) and (ii) of Section 6.01(a) thereof, the Issuer and the Trustee may not enter into a Supplemental Indenture without receiving an opinion of Bond Counsel that such amendment to the Indenture will not adversely affect the exemption of interest on the Series A Bonds from the gross income of the owners thereof.

Section 8.04. Notification of Investment Agreement Provider. The Trustee shall deliver to the Investment Agreement Provider written notice of all proposed amendments to the Indenture, which notice shall be accompanied by the proposed amendments. No amendment of the Indenture shall have the effect of diminishing the Investment Agreement Provider's rights or remedies under the Investment Agreement without its prior written consent.

[End of Article VIII]

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF INDENTURE

Section 9.01. Defeasance. When the principal of, and interest on, all Bonds issued hereunder have been paid, or provision has been made for payment of the same, together with all other sums payable hereunder by the Issuer, the right, title and interest of the Trustee shall thereupon cease and the Trustee, on demand of the Issuer, shall release the lien of this Indenture, and, at the written direction of the Developer, either (i) cancel the Mortgage Note and return the same to the Developer, shall endorse the Mortgage for cancellation, and shall execute such documents to evidence such release as may be reasonably required by the Issuer and the Developer and shall turn over to the Developer or such person, body or authority as may be entitled to receive the same all balances remaining in any funds hereunder or (ii) endorse, transfer, assign and convey the Mortgage Note to the party directed by the Developer and shall execute such documents to evidence such endorsement, transfer, assignment, and conveyance as may be reasonably required by the Issuer and the Developer and shall turn over to the Developer or such person, body or authority as may be entitled to receive the same all balances remaining in any funds hereunder; provided, however, that in the event of a default under the Mortgage and payment of a claim under the mortgage insurance in FHA debentures, if any principal remains outstanding on such FHA debentures when the principal of, and interest on all Bonds has been paid, or provision therefor has been made, as provided below, the Trustee shall return such FHA debentures to FHA for cancellation, unless the Issuer and the Trustee shall have received a written opinion of nationally recognized bond counsel satisfactory to both that retention of such FHA debentures will not adversely affect the exemption of interest on the Series A Bonds from federal income tax.

Proper provision for the payment of the principal of and interest on the Bonds may be made by delivery to the Trustee of (a) cash, (b) non-callable direct obligations of the United States of America, or non-callable obligations fully guaranteed as to principal and interest by the United States of America, maturing on or before the dates when payments in respect of the Bonds become due, and the principal amount of which and the interest thereon which when due will be in an aggregate amount sufficient without reinvestment to make all payments on the Bonds when due, (c) non-callable obligations of the Resolution Funding Corporation representing an undivided interest in payments of interest from Resolution Funding Corporation obligations, or (d) any combination of cash and such obligations (collectively, "Defeasance Obligations"). The lien of this Indenture shall not be discharged until the Trustee shall have received an opinion of bankruptcy counsel, acceptable to the Trustee, to the effect that payment of such moneys to the Bondholders will not constitute a voidable preference under Section 547 or be recoverable under Section 362 or Section 550(a) of the United States Bankruptcy Code in the event of the bankruptcy of the Developer.

Section 9.02. Exchange of Bonds for Trust Estate. Upon the termination of the Custody Agreement pursuant to Section 6.02(c) thereof, the Depositor may, at its option, instruct the Issuer to instruct the Trustee to (i) purchase the entire principal amount of the Outstanding Series A Bonds from the Depositor, (ii) establish a defeasance escrow with the Trustee with

Defeasance Obligations provided by the Depositor, in an amount sufficient to defease the Series B Bonds to the earliest date on which such Series B Bonds are subject to optional redemption pursuant to Section 3.01(a) hereof, and to call the Series B Bonds for redemption on such date. In consideration for the purchase of the Series A Bonds and the establishment of the defeasance escrow, the Trustee shall assign the Trust Estate to the Depositor in exchange for the Series A Bonds and Defeasance Obligations. Upon receipt of the Series A Bonds and the Defeasance Obligations, the Trustee shall cancel all of the Outstanding Series A Bonds, defease the Outstanding Series B Bonds pursuant to the provisions of Section 9.01 hereof, and release the Trust Estate from the lien of this Indenture; provided, however, that the lien of this Indenture shall not be discharged until the Trustee shall have received an opinion of bankruptcy counsel, as described in Section 9.01 hereof. Notwithstanding anything in this Indenture to the contrary, this Section 9.02 may not be amended or supplemented in any way without the consent of the Depositor.

[End of Article IX]

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Consents and Other Instruments of Bondholders. Any consent, request, direction, approval, waiver, objection, appointment or other instrument required by this Indenture to be signed and executed by the Bondholders may be signed and executed in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such instrument, if made in the following manner, shall be sufficient for any of the purposes of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken under such instrument, namely:

(a) The fact and date of the execution by any Person of any such instrument may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such instrument acknowledged to him the execution thereof. Where such execution is by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such affidavit or certificate shall also constitute sufficient proof of his authority.

(b) The ownership of Bonds shall be provided by the Bond Register.

(c) Any request, consent or vote of the holder of any Bond shall bind every future holder of the same Bond and the holder of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or permitted to be done by the Trustee or the Issuer pursuant to such request, consent or vote.

(d) In determining whether the holders of the requisite amount of the Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds that are owned by the Issuer or the Developer or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer or the Developer shall be disregarded and deemed not to be Outstanding for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver. Only Bonds which the Trustee knows to be so owned shall be disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

Section 10.02. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, FHA, the Developer

and the holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions hereof.

Section 10.03. Severability. If any provision of this Indenture shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable, to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Indenture contained shall not affect the remaining portions of this Indenture or any part thereof.

Section 10.04. Notices. Except as otherwise provided, all notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed postage prepaid, return receipt requested, or dispatched by telegram, addressed to the Notice Address of the Person to whom such notices, certificates or other communications are given.

Section 10.05. Payments Due on Saturdays, Sundays and Holidays. In any case where the date of maturity of interest on or principal of the Bonds, or the date fixed for redemption of any Bonds, shall be a Saturday, Sunday, legal holiday or a day on which banking institutions in the state in which the corporate trust operations office is located are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 10.06. Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.07. Situs. The State shall be deemed to be the situs of the Trust Estate for all purposes of this Indenture.

Section 10.08. No Recourse. No recourse shall be had for the payment of the principal of (or premium, if any) or the interest on the Bonds, or for any claim based thereon, or otherwise in respect thereof, or based on or in respect of the Indenture or any indenture supplemental hereto, against any trustee, member, officer, agent, counsel or director, as such, past, present or future, of the Issuer or any successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance thereof and as part of the consideration for the issue thereof, expressly waived and released.



Section 10.09. Successors and Assigns. All the covenants and representations contained in this Indenture, by or on behalf of the Issuer and the Trustee, shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

Section 10.10. Books, Records and Accounts. The Trustee agrees to keep proper books, records and accounts in which complete and correct entries shall be made of all transactions relating to the receipt, disbursements, investment, allocation and application of the proceeds received from the sale of the Bonds, the revenues received from the Loan Agreement, the Loan, the Funds created pursuant to this Indenture and all other moneys held by the Trustee hereunder. The Trustee shall make such books, records and accounts available for inspection by the Issuer or the owner of any Bond during reasonable hours and under reasonable conditions.

Section 10.11. Subordination to HUD Regulations. Notwithstanding anything in this instrument to the contrary, the provisions hereof are subject to the following:

(a) In the event of conflict between the provisions of this instrument and the National Housing Act, the regulations and administrative requirements promulgated thereto, such acts, regulations and administrative requirements shall control. No amendment to this instrument shall conflict with any such acts, regulations, administrative requirements.

(b) This instrument shall not be construed to restrict or adversely affect the duties and obligations of the Trustee under the contracts of insurance between the Trustee and FHA with respect to the Loan.

(c) The Bonds are not a debt of the United States of America, FHA, or any other federal governmental agency and are not guaranteed by the full faith and credit of the United States.

(d) Any project funds held by the Trustee, as mortgagee, for or on behalf of the Developer shall be maintained separate and apart from the funds established and held by the Trustee for the holders of the Bonds and the various escrows and funds, if any, under this Indenture.

Section 10.12. Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State of Indiana.

Section 10.13. Headings. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

[End of Article X]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed and their respective corporate seals to be hereunto affixed and attested, all as of the date and year first above written.

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Name:  
Title: Mayor

(SEAL)

Attest:

By: \_\_\_\_\_  
Name:  
Title: Clerk

SOCIETY NATIONAL BANK, INDIANA,  
as Trustee

Attest:

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT A

[FORM OF SERIES A BOND]

UNITED STATES OF AMERICA  
STATE OF INDIANA

CITY OF FORT WAYNE, INDIANA  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993A

No.

CUSIP:

Dated Date: August 1, 1993

Maturity Date: August 1, 2013

Interest Rate: 10.25 %

Payment Dates: As described below

Registered Owner: CEDE & CO.

Principal Amount: THREE MILLION SEVEN HUNDRED TWENTY THOUSAND AND  
NO/100 DOLLARS

THE CITY OF FORT WAYNE, INDIANA (the "Issuer"), a municipal corporation and political subdivision of the State of Indiana (the "State"), FOR VALUE RECEIVED, hereby promises (but only out of the Net Revenues (as defined below)) to pay to the registered owner identified above or registered assigns (subject to any right of prior redemption provided for in the Indenture referred to below), on the Maturity Date set forth above, the Principal Amount set forth above and to pay interest thereon from the Dated Date set forth above, or from the most recent Payment Date (described below) to which interest has been paid or duly provided for, on each Payment Date (described below), at the applicable interest rate per annum set forth above until the principal hereof is duly paid or provided for.

"Payment Date" means, while the Certificates bear interest at the Weekly Reset Rate the first day of each month, provided, however, that while the Certificates bear interest at the Term Reset Rate, and upon receipt by the Trustee of the Notice of Termination of Custody Agreement substantially in the form attached to the Custody and Tender Option Agreement such Payment Date shall occur on each February 1 and August 1, commencing on February 1, 1994.

Notwithstanding the foregoing, if the date hereof is after a Regular Record Date for such interest (which shall be the 15th day of the month immediately preceding each Payment Date) and before the following Payment Date, and if the Issuer shall not default in the payment of interest due on such Payment Date, this Series A Bond shall bear interest from such Payment Date. The interest so payable on any Payment Date will, subject to certain exceptions provided in the Indenture referred to below, be paid to the person in whose name this Bond (or one or more predecessor Bonds) is registered at the close of business on the Regular Record Date next preceding such Payment Date. Principal of, and premium, if any, and interest on this Series A Bond are payable in such coin or currency of the United States of America as at the time of payment is legal tender for payment of private and public debts, at the operations office of Society National Bank, Indiana, or its successor in trust (the "Trustee"). Payment of interest alone shall be made by check or draft mailed to the address of the person entitled thereto.

This Bond is one of a duly authorized issue of bonds of the Issuer designated as its Health Care Facilities Revenue Refunding Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993A, limited in aggregate principal amount to \$3,720,000 (the "Series A Bonds"), all issued pursuant to the provisions of the Title 36, Article 7, Chapters 11.9 and 12 of the Indiana Code, as amended, and Title 5, Article 1, Chapter 5 of the Indiana Code, as amended (collectively, the "Act"). Simultaneously with the issuance of the Series A Bonds, the Issuer has also issued \$345,000 principal amount of its Taxable Revenue Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993B (the "Series B Bonds"). The Series A Bonds and the Series B Bonds are issued under and are equally and ratably secured as to principal, premium, if any, and interest by a Trust Indenture dated as of August 1, 1993 between the Issuer and the Trustee (the "Indenture"), to which Indenture and all indentures supplemental thereto (copies of which are on file at the operations office of the Trustee) reference is hereby made for a description of the trust estate under the Indenture, the nature and extent of the security, the terms and conditions upon which the Bonds are issued and secured, and the rights of the owners thereof.

As described in the Indenture, "Net Revenues" means all income, revenues, proceeds and other amounts received by the Issuer or the Trustee from or in connection with the Mortgage Loan (including any prepayments thereof) and any and all interest, profits or other income derived from the investment of amounts in any funds or accounts (but not the Rebate Fund) established pursuant to this Indenture, but shall not include (i) amounts retained by the Mortgage Servicer as a servicing fee, (ii) any payments received by the Trustee which are to be applied by the Trustee (as mortgagee under the Mortgage), pursuant to paragraph (9)(c)(I) or (II) of the Mortgage or (iii) any funds held by the Trustee (as mortgagee under the Mortgage) on behalf of the Developer pursuant to the Mortgage or the Regulatory Agreement.

The Bonds are limited obligations of the Issuer. Neither the Commissioners of the Issuer nor any persons executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds shall not be a debt of the State of Indiana, or any political subdivision thereof (other than the Issuer), and neither the State of Indiana nor any political subdivision thereof (other than the Issuer) shall be liable thereon, nor in any event shall the Bonds be payable out of any funds or properties other than those of the Issuer specifically

pledged thereto. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. The Bonds are not a debt of the United States of America, HUD or any other federal governmental agency or the FHA and are not guaranteed by the full faith and credit of the United States.

The Bonds are being issued to refund the Issuer's City of Fort Wayne, Indiana Health Care Facilities Revenue Bonds Health Quest Realty X Issue (FHA Insured Mortgage), Series A (the "Prior Bonds") and to pay certain costs of issuance. The Prior Bonds were originally issued to fund a mortgage loan (the "Mortgage Loan") insured by the Federal Housing Administration ("FHA"), an organizational unit of the United States Department of Housing and Urban Development ("HUD"), made to Health Quest Realty X, an Indiana limited partnership (the "Owner"), for the purpose of constructing and equipping a nursing home facility (the "Project"). Under the provisions of a Loan Agreement (defined in the Indenture), the Issuer will, upon the terms and conditions specified in the Indenture, cause the proceeds of the Bonds to be applied in such manner to cause the Prior Bonds to be refunded in full. Under the Loan Agreement, the Owner has agreed to pay the Mortgage Note (defined in the Indenture) in installments scheduled to be sufficient to pay the principal of, interest on and premium, if any, of the Bonds when due. The Bonds will be secured by a pledge of all right, title and interest of the Issuer in the Net Revenues and all other security for the Mortgage Loan, which will be transferred to the Trustee upon the defeasance of the lien of the indenture securing the Prior Bonds, and by certain other security described in the Indenture. The Bonds are being issued in the form of fully registered bonds without coupons.

The Bonds are subject to redemption prior to maturity by the Issuer, but only upon the request of the Developer, at any time in order of maturity and within a maturity by lot, from optional prepayments of principal on the Mortgage Note made by the Developer or from proceeds of refunding bonds and deposited in the Redemption Fund established under this Indenture, in an aggregate amount which, together with all such prior redemptions under this paragraph during the then current calendar year, does not exceed \$601,620. Any such redemption shall be made at a redemption price of 100% of the principal amount thereof, plus interest accrued to the redemption date.

The Bonds are also subject to redemption prior to maturity by the Issuer, but only upon the request of the Developer, in whole at any time, or in part on any February 1 or August 1 on or after the Closing Date in order of maturity and within a maturity by lot, from optional prepayments of principal on the Mortgage Note made by the Developer and deposited in the Redemption Fund established under this Indenture, or from the proceeds of refunding bonds. Any such redemption shall be made at a redemption price (shown below as a percentage of the principal amount to be redeemed which is in excess of \$601,620 during any calendar year), plus interest accrued to the redemption date:

<u>Redemption Periods</u>	<u>Redemption Prices</u>
Closing Date through July 31, 1994	102 %
August 1, 1994 through July 31, 1995	101.5
August 1, 1995 through July 31, 1996	101
August 1, 1996 through July 31, 1997	100.5
August 1, 1997 and thereafter	100

In the event of an optional redemption of Bonds on a date on which the redemption price includes a redemption premium, the Trustee shall not give notice of such redemption unless (i) the Trustee shall have received an opinion of bankruptcy counsel, acceptable to the Trustee, to the effect that payment of such money to Bondholders would not constitute a voidable preference under Section 547 or be recoverable under Section 362 or Section 550(a) of the United States Bankruptcy Code in the event of the bankruptcy of the Developer; and (ii) the Trustee shall have received the prepayment of the Mortgage Loan.

The Bonds are subject to special mandatory redemption prior to maturity (i) as a whole or in part, at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the redemption date in direct order of maturity on each February 1 or August 1 from Excess Revenues transferred from the Bond Fund to the Redemption Fund for such purpose pursuant to the Indenture and (ii) as a whole, on any Payment Date for which timely notice of redemption can be given, if the sum of the amount held in the Bond Fund, the Debt Service Reserve Fund and the Redemption Fund equals or exceeds the redemption price of the Bonds then outstanding, plus Qualified Expenses then due and payable from any amounts held in such funds.

The Bonds are subject to redemption in whole or in part on the earliest practicable date for which proper notice of redemption can be given at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption to the extent the proceeds of any condemnation award or insurance recovery are applied to the prepayment of the Mortgage Note.

To the extent that FHA Mortgage Insurance benefits are paid to the Trustee in cash, the Trustee shall redeem the Bonds, in whole or in part, on the earliest practicable date for which proper notice of redemption can be given at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption.

If FHA mortgage insurance benefits are paid to the Trustee in FHA debentures and such FHA debentures can be sold or tendered to HUD at a price sufficient to redeem the Bonds, the Trustee shall redeem the Bonds therefrom on the earliest practicable date for which proper notice of redemption can be given at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption.

The Bonds shall be called for redemption in whole or in part on the earliest practicable date for which proper notice of such redemption can be given pursuant to the Indenture at a

redemption price of 100% of the principal amount, plus accrued interest to the date of redemption in the event that prepayment of the Mortgage Note is required to be made (i) pursuant to applicable rules, requirements or policies of HUD in order to avoid an FHA mortgage insurance claim or otherwise or (ii) without notice while under the supervision of a trustee in bankruptcy proceedings.

For purposes of selecting Bonds for redemption, Bonds shall be deemed to be composed of \$5,000 portions and any such portion may be separately redeemed. Such Bonds shall be selected for redemption in direct order of their maturity and within each maturity, by lot. The Trustee shall promptly notify the Issuer in writing of the Bonds or portions thereof selected for redemption. The Trustee's selection of Bonds for redemption shall be final and conclusive.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond may be exchanged, and its transfer may be registered, by the registered owner hereof in person or by his attorney duly authorized in writing at the operations corporate trust office of the Trustee, but only in the manner and subject to the limitations set forth in the Indenture and upon payment of a charge to reimburse the Trustee for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange, and upon surrender and cancellation of this Bond. Upon exchange or registration of such transfer, a new registered Bond or Bonds of the same maturity and interest rate and of authorized denomination or denominations for the same aggregate principal amount will be issued in exchange therefor. The Trustee shall not be required to transfer any Bond after the mailing of notice calling such Bond for redemption has been made.

The Issuer and the Trustee may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

The Bonds are issuable only as registered Bonds without coupons in denominations of \$5,000 principal amount and any integral multiple thereof.

The principal hereof may be declared or may become due on the conditions, in the manner and at the time set forth in the Indenture upon the occurrence of an event of default as provided in the Indenture.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on this Bond, or for any claim based hereon, or otherwise in respect hereof, or based on or in

respect of the Indenture or any indenture supplemental thereto, against any trustee, member, officer, agent, counsel or director, as such, past, present or future, of the Issuer or any successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law and that the issuance of this Bond, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until such Bond shall have been authenticated by the certificate of the Trustee endorsed hereon.



IN WITNESS WHEREOF, the Issuer has caused this Bond to be duly executed in its name by the facsimile signatures of its Mayor under its official seal, or a facsimile thereof, and attested by the facsimile signature of its Clerk.

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_

Name:

Title: Mayor

(SEAL)

Attest:

By: \_\_\_\_\_

Name:

Title: Clerk

## CERTIFICATE OF AUTHENTICATION

This Series A Bond is one of the Series A Bonds of the issue described in the within mentioned Indenture.

SOCIETY NATIONAL BANK, INDIANA,  
as Trustee

By \_\_\_\_\_  
Authorized Officer

Authentication Date:

\_\_\_\_\_

## ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_  
\_\_\_\_\_ the within Bond and all rights thereunder and hereby irrevocably  
constitutes and appoints \_\_\_\_\_ to transfer the within-mentioned Bond on the books  
kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

Please insert social security or other identifying number of assignee: \_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange  
or a commercial bank or trust company.

NOTICE: The signature to this Assignment must correspond with the name as it appears upon  
the face of the within bond in every particular, without alteration or enlargement or any change  
whatever.

**EXHIBIT B**

**[FORM OF SERIES B BOND]**

**UNITED STATES OF AMERICA  
STATE OF INDIANA**

**CITY OF FORT WAYNE, INDIANA  
HEALTH CARE FACILITIES TAXABLE REVENUE BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993B**

**No.**

**CUSIP:**

**Dated Date: August 1, 1993**

**Maturity Date: August 1, 2003**

**Interest Rate: 8%**

**Payment Dates: February 1  
and August 1, commencing  
February 1, 1994**

**REGISTERED OWNER: CEDE & CO.**

**PRINCIPAL AMOUNT: THREE HUNDRED FORTY-FIVE THOUSAND AND NO/100  
DOLLARS**

THE CITY OF FORT WAYNE, INDIANA (the "Issuer"), a political subdivision of the State of Indiana (the "State"), FOR VALUE RECEIVED, hereby promises (but only out of the Net Revenues, as defined below) to pay to the registered owner identified above or registered assigns (subject to any right of prior redemption provided for in the Indenture referred to below), on the Maturity Date set forth above, the Principal Amount set forth above and to pay interest thereon from the Dated Date set forth above, or from the most recent Payment Date to which interest has been paid or duly provided for, on each Payment Date set forth above, at the applicable interest rate per annum set forth above until the principal hereof is duly paid or provided for. Notwithstanding the foregoing, if the date hereof is after a Regular Record Date for such interest (which shall be the 15th day of the month immediately preceding each Payment Date) and before the following Payment Date, and if the Issuer shall not default in the payment of interest due on such Payment Date, this Series B Bond shall bear interest from such Payment Date. The interest so payable on any Payment Date will, subject to certain exceptions provided in the Indenture referred to below, be paid to the person in whose name this Series B Bond (or one or more predecessor Series B Bonds) is registered at the close of business on the Regular

Record Date next preceding such Payment Date. Principal of, and premium, if any, and interest on this Series B Bond is payable in such coin or currency of the United States of America as at time of payment is legal tender for payment of private and public debts, at the operations corporate trust office of Society National Bank, Indiana, or its successor in trust (the "Trustee"). Payment of interest alone shall be made by check or draft mailed to the Registered Owner. As described in the Indenture, "Net Revenues" means all income, revenues, proceeds and other amounts received by the Issuer or the Trustee from or in connection with the Mortgage Loan (including any prepayments thereof) and any and all interest, profits or other income derived from the investment of amounts in any funds or accounts (but not the Rebate Fund) established pursuant to this Indenture, but shall not include (i) amounts retained by the Mortgage Servicer as a servicing fee, (ii) any payments received by the Trustee which are to be applied by the Trustee (as mortgagee under the Mortgage), pursuant to paragraph (9)(c)(I) or (II) of the Mortgage or (iii) any funds held by the Trustee (as mortgagee under the Mortgage) on behalf of the Developer pursuant to the Mortgage or the Regulatory Agreement.

This Series B Bond is one of a duly authorized issue of bonds of the Issuer designated as its Health Care Facilities Taxable Revenue Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993B, limited in aggregate principal amount to \$345,000 (the "Series B Bonds"), all issued pursuant to the provisions of Title 36, Article 7, Chapters 11.9 and 12 of the Indiana Code, as amended (the "Act"). The Series B Bonds and the Issuer's Health Care Facilities Revenue Refunding Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993A (the "Series A Bonds," collectively, the "Bonds") are issued under and are equally and ratably secured as to principal, premium, if any, and interest by a Trust Indenture dated as of August 1, 1993 between the Issuer and the Trustee (the "Indenture"), to which Indenture and all indentures supplemental thereto (copies of which are on file at the operations corporate trust office of the Trustee) reference is hereby made for a description of the trust estate under the Indenture, the nature and extent of the security, the terms and conditions upon which the Series B Bonds are issued and secured, and the rights of the owners thereof.

The Bonds are limited obligations of the Issuer. Neither the Commissioners of the Issuer nor any persons executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds shall not be a debt of the State of Indiana, or any political subdivision thereof (other than the Issuer), and neither the State of Indiana or any political subdivision thereof (other than the Issuer) shall be liable thereon, nor in any event shall the Bonds be payable out of any funds or properties other than those of the Issuer specifically pledged thereto. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. The Bonds are not a debt of the United States of America, HUD or any other federal governmental agency or the FHA and are not guaranteed by the full faith and credit of the United States.

The Series A Bonds are being issued to refund the Issuer's City of Fort Wayne, Indiana Health Care Facilities Revenue Bonds Health Quest Realty X Issue (FHA Insured Mortgage), Series A (the "Prior Bonds"). The Prior Bonds were originally issued to fund a mortgage loan (the "Mortgage Loan") insured by the Federal Housing Administration ("FHA"), an organizational unit of the United States Department of Housing and Urban Development

("HUD") made to Health Quest Realty X, an Indiana limited partnership (the "Owner"), for the purpose of constructing and equipping a nursing home facility (the "Project"). The proceeds of the Series B Bonds will be used to pay costs of issuance of the Bonds and to fund [ ]. The Issuer will upon the terms and conditions specified in the Indenture cause the proceeds of the Bonds to be applied in such manner to cause the Prior Bonds to be refunded in full, in order to secure the full and timely payment of all principal, premium and interest on the Bonds when due. Under the Loan Agreement (defined in the Indenture), the Owner has agreed to pay the Mortgage Note (defined in the Indenture) in installments scheduled to be sufficient to pay the principal of, interest on and premium, if any, of the Bonds when due. The Bonds will be secured by a pledge of all right, title and interest of the Issuer in the Net Revenues and all other security for the Mortgage Loan, which will be transferred to the Trustee upon the defeasance of the lien of the indenture securing the Prior Bonds, and by certain other security described in the Indenture. The Series B Bonds are being issued in the form of fully registered bonds without coupons.

The Bonds are subject to redemption prior to maturity by the Issuer, but only upon the request of the Developer at any time in order of maturity and within a maturity by lot, from optional prepayments of principal on the Mortgage Note made by the Developer or from proceeds of refunding bonds and deposited in the Redemption Fund established under the Indenture, in an aggregate amount which, together with all such prior redemptions under this paragraph during the then current calendar year, does not exceed \$601,620. Any such redemption shall be made at a redemption price of 100% of the principal amount thereof, plus interest accrued to the redemption date.

The Bonds are also subject to redemption prior to maturity by the Issuer, but only upon the request of the Developer, in whole at any time, or in part on any February 1 or August 1 commencing after the Closing Date in order of maturity and within a maturity by lot, from optional prepayments of principal on the Mortgage Note made by the Developer and deposited in the Redemption Fund established under this Indenture, or from the proceeds of refunding bonds. Any such redemption shall be made at a redemption price (shown below as a percentage of the principal amount to be redeemed which is in excess of \$601,620 during any calendar year), plus interest accrued to the redemption date:

<u>Redemption Periods</u>	<u>Redemption Prices</u>
Closing Date through July 31, 1994	102 %
August 1, 1994 through July 31, 1995	101.5
August 1, 1995 through July 31, 1996	101
August 1, 1996 through July 31, 1997	100.5
August 1, 1997 and thereafter	100

In the event of an optional redemption of Bonds on a date on which the redemption price includes a redemption premium, the Trustee shall not give notice of such redemption unless (i) the Trustee shall have received an opinion of bankruptcy counsel, acceptable to the Trustee, to the effect that payment of such money to Bondholders would not constitute a voidable

preference under Section 547 or be recoverable under Section 362 or Section 550(a) of the United States Bankruptcy Code in the event of the bankruptcy of the Developer; and (ii) the Trustee shall have received the prepayment of the Mortgage Loan.

The Bonds are subject to special mandatory redemption prior to maturity (i) as a whole or in part, at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the redemption date in direct order of maturity on each February 1, or August 1 from Excess Revenues transferred from the Bond Fund to the Redemption Fund for such purpose pursuant to the Indenture and (ii) as a whole, on any February 1 or August 1 for which timely notice of redemption can be given, if the sum of the amount held in the Bond Fund, the Debt Service Reserve Fund and the Redemption Fund equals or exceeds the redemption price of the Bonds then outstanding, plus Qualified Expenses then due and payable from any amounts held in such funds.

The Bonds are subject to redemption in whole or in part on the earliest practicable date for which proper notice of redemption can be given at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption to the extent the proceeds of any condemnation award or insurance recovery are applied to the prepayment of the Mortgage Note.

To the extent that FHA Mortgage Insurance benefits are paid to the Trustee in cash, the Trustee shall redeem the Bonds, in whole or in part, on the earliest practicable date for which proper notice of redemption can be given at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption.

If FHA mortgage insurance benefits are paid to the Trustee in FHA debentures and such FHA debentures can be sold or tendered to HUD at a price sufficient to redeem the Bonds and the Series B Bonds, the Trustee shall redeem the Bonds therefrom on the earliest practicable date for which proper notice of redemption can be given at a redemption price of 100% of the principal amount, plus accrued interest to the date fixed for redemption.

The Bonds shall be called for redemption in whole or in part on the earliest practicable date for which proper notice of such redemption can be given pursuant to the Indenture at a redemption price of 100% of the principal amount, plus accrued interest to the date of redemption in the event that prepayment of the Mortgage Note is required to be made (i) pursuant to applicable rules, requirements and policies of HUD in order to avoid an FHA Mortgage Insurance claim or (ii) without notice while under the supervision of a trustee in bankruptcy proceedings.

For purposes of selecting Bonds for redemption, Bonds shall be deemed to be composed of \$5,000 portions and any such portion may be separately redeemed. The Bonds shall be selected for redemption in direct order of their maturity and within each maturity, by lot. The Trustee shall promptly notify the Issuer in writing of the Bonds or portions thereof selected for redemption. The Trustee's selection of Bonds for redemption shall be final and conclusive.

Upon surrender of any Bond redeemed in part only, the Issuer shall execute and the Trustee shall authenticate and deliver to the registered owner thereof, without expense to such registered owner, a new Bond or Bonds of the same maturity and of authorized denominations equal in aggregate principal amount or Accreted Value to the unredeemed portion of the Bond surrendered.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Series B Bond may be exchanged, and its transfer may be registered, by the registered owner hereof in person or by his attorney duly authorized in writing at the operations corporate trust office of the Trustee, but only in the manner and subject to the limitations set forth in the Indenture and upon payment of a charge to reimburse the Trustee for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange, and upon surrender and cancellation of this Series B Bond. Upon exchange or registration of such transfer, a new registered Series B Bond or Series B Bonds of the same maturity and interest rate and of authorized denomination or denominations for the same aggregate principal amount will be issued in exchange therefor. The Trustee shall not be required to transfer any Series B Bond after the mailing of notice calling such Series B Bond for redemption has been made.

The Issuer and the Trustee may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

The Bonds are issuable only as registered Bonds without coupons in denominations of \$5,000 principal amount and any integral multiple thereof.

The principal hereof may be declared or may become due on the conditions, in the manner and at the time set forth in the Indenture upon the occurrence of an event of default as provided in the Indenture.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on this Series B Bond, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any trustee, member, officer, agent, counsel or director, as such, past, present or future, of the Issuer or any successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.



It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Series B Bond do exist, have happened and have been performed in due time, form and manner as required by law and that the issuance of this Series B Bond, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation.

This Series B Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until such Series B Bond shall have been authenticated by the certificate of the Trustee endorsed hereon.

IN WITNESS WHEREOF, the Issuer has caused this Series B Bond to be duly executed in its name by the facsimile signatures of its Mayor under its official seal, or a facsimile thereof, and attested by the facsimile signature of its Clerk.

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Name:  
Title: Mayor

(SEAL)

Attest:

By: \_\_\_\_\_  
Name:  
Title: Clerk

## CERTIFICATE OF AUTHENTICATION

This Series B Bond is one of the Series B Bonds of the issue described in the within mentioned Indenture.

SOCIETY NATIONAL BANK, INDIANA,  
as Trustee

By \_\_\_\_\_  
Authorized Officer

Authentication Date:

\_\_\_\_\_

## ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_ the within Series B Bond and all rights thereunder and hereby irrevocably constitutes and appoints \_\_\_\_\_ to transfer the within-mentioned Series B Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

Please insert social security or other identifying number of assignee: \_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

NOTICE: The signature to this Assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

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LOAN AGREEMENT  
between  
CITY OF FORT WAYNE, INDIANA  
and  
HEALTH QUEST REALTY X

Dated as of August 1, 1993

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THIS LOAN AGREEMENT (this "Agreement"), dated as of August 1, 1993, by and between the CITY OF FORT WAYNE, INDIANA (the "Issuer"), a municipal corporation and a political subdivision of the State of Indiana, and HEALTH QUEST REALTY X, an Indiana limited partnership (the "Developer").

W I T N E S S E T H :

WHEREAS, the Issuer has, pursuant to Title 18, Article 6, Chapter 4.5 of the Indiana Code, as amended and now codified as Title 36, Article 7, Chapter 12, and by Ordinance No. \_\_\_\_\_, adopted by the Common Council of the Issuer on \_\_\_\_\_, created as a department of the Issuer, the Fort Wayne Economic Development Commission (the "Commission"); and

WHEREAS, pursuant to the Act the Commission has heretofore authorized the financing for the acquisition and improvement of certain premises in the City of Fort Wayne, Indiana and the construction thereon and equipment of a nursing home project (the "Project"); and

WHEREAS, the Project was financed with the proceeds of \$4,470,000 original principal amount of City of Fort Wayne, Indiana, Health Care Facilities Revenue Bonds, Health Quest Realty X Issue (FHA Insured Project), Series A (the "1983 Bonds") issued by the Issuer on November 15, 1983 pursuant to the Act and the Trust Indenture dated as of November 1, 1983 (the "1983 Indenture") between the Issuer and Society National Bank, Indiana (formerly St. Joseph Bank and Trust Company, South Bend, Indiana); and

WHEREAS, the Issuer loaned (the "1983 Loan") the proceeds of the 1983 Bonds to the Developer pursuant to a Financing Agreement dated as of November 1, 1983 (the "1983 Financing Agreement") between the Issuer and the Developer, pursuant to which the Developer agreed to make payments to provide sufficient funds to pay the principal of and interest on the 1983 Bonds; and

WHEREAS, the 1983 Loan is evidenced by the Developer's note (the "Note") (FHA Form No. 4118-B) in the original principal amount of \$4,010,800, and a Mortgage securing the Note constituting a first lien on the Project (the "Mortgage"); and

WHEREAS, pursuant to a commitment dated October 19, 1983 (the "Commitment") issued to Cambridge Healthcare Funding, Inc. (formerly known as Blyth Eastman Paine Webber Health Care Funding, Inc.) (the "Servicer"), as mortgage servicer, and a Regulatory Agreement with the Developer (the "Regulatory Agreement"), the United States Secretary of Housing and Urban Development, acting through the Federal Housing Commissioner ("FHA"), insured the advances of funds secured by the Mortgage, and the Note was initially endorsed for insurance by FHA pursuant to Section 232 of the National Housing Act, as amended, and the regulations thereunder; and

WHEREAS, the Issuer, as requested by the Developer, has determined to issue, sell and deliver "\$3,720,000 City of Fort Wayne, Indiana, Health Care Facilities Revenue Refunding Bonds, Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993A" (the "Series A

Bonds") and "\$345,000 City of Fort Wayne, Indiana Health Care Facilities Taxable Revenue Bonds Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993 B" (the "Series B Bonds") (together referred to herein as the "Bonds") pursuant to the Act and the Trust Indenture dated as of August 1, 1993 (the "Indenture") between the Issuer and Society National Bank, Indiana, as Trustee, to make funds available for the refunding of the 1983 Bonds and the refinancing of the Project; and

WHEREAS, upon the redemption of the 1983 Bonds, the Note and the Mortgage will be held by the Trustee as security for the Bonds and FHA will continue to insure the advances of funds secured by the Mortgage and Note; and

WHEREAS, the Developer \\is currently leasing the Project (the "Lease") to \\Nationwide Care, Inc., [an Indiana Corporation \\] (the "User"); and

WHEREAS, the Servicer has assigned the Commitment to the Trustee; and

WHEREAS, pursuant to a Servicing Agreement dated as of November 1, 1983 (the "Servicing Agreement") between the Servicer and the Trustee, the payments required to be made by the Developer pursuant to the Note, the Mortgage and the Regulatory Agreement are to be collected by the Servicer and deposited in the Mortgage Payment Fund and the Reserve Fund for Replacements established pursuant to the Servicing Agreement, and the Servicer will forward to the Trustee, from the Principal and Interest Account of the Mortgage Payment Fund, the payments of, or on account of, principal of and interest on the Note, such payments to be deposited by the Trustee in the Bond Fund established under the Indenture and applied to pay the principal of, premium, if any, and interest on the Bonds;

NOW, THEREFORE, in consideration of the issuance of the Bonds by the Issuer and the loan of the proceeds thereof to the Developer, the mutual covenants and agreements of the parties hereto, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Issuer and the Developer hereby agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1 Definitions. The terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Indenture.

Section 1.2 Rules of Interpretation. The following rules shall apply to the construction of this Agreement unless the context required otherwise: (a) the singular includes the plural and the plural, the singular; (b) words importing any gender include the other genders; (c) references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute to which reference is made and all regulations promulgated pursuant to such statutes; (d) references to "writing" include printing, photocopy, typing, lithography and other means of reproducing words in a tangible visible form; (e) the words "including," "includes"

and "include" shall be deemed to be followed by the words "without limitation"; (f) references to the introductory paragraph, preliminary statements, articles, sections (or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Agreement unless otherwise indicated; (g) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent that such amendments and other modifications are permitted or not prohibited by the terms of this Agreement; (h) references to Persons include their respective successors and assigns permitted or not prohibited by the terms of this Agreement; (i) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles; (j) "or" is not exclusive; (k) provisions apply to successive events and transactions; (l) references to documents or agreements which have been terminated or released or which have expired shall be of no force and effect after such termination, release or expiration; (m) references to mail shall be deemed to refer to first-class mail, postage prepaid, unless another type of mail is specified; (n) all references to time shall be to City of Fort Wayne, Indiana time; (o) references to specific persons, positions or officers shall include those who or which succeed to or perform their respective functions, duties or responsibilities referred to in the Bond proceedings; and (p) the terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Agreement as a whole and not to any particular article, section or subdivision hereof; and the term "heretofore" means before the date of execution of this Agreement, the term "now" means at the date of execution of this Agreement, and the term "hereafter" means after the date of execution of this Agreement.

## ARTICLE II

### THE LOAN

2.1 Issuance of the Bonds. The Bonds issued under the Indenture may be sold in one or more series, at such times, in such amounts, with such provisions, at such interest rates and for such prices as may be approved by the Developer. The Issuer agrees to lend to the Developer, and the Developer agrees to borrow from the Issuer, the proceeds of the Bonds for the purpose of refunding the 1983 Bonds. The loan made to the Developer pursuant to this Agreement shall bear interest at a rate sufficient to provide funds which, together with income from the investment of moneys in the Debt Service Reserve Fund established under the Indenture, shall provide sufficient funds to pay the principal of and interest on the Bonds.

2.2 Payments by the Developer. The Developer shall repay the loan to be made to it pursuant to this Agreement by making payments in amounts sufficient to pay the principal of and interest on the Bonds. As the source of such payments and in full satisfaction of its obligation to make such payments, the Developer shall deliver to the Trustee, as the Issuer's assignee of this Agreement, the Note, secured by the Mortgage, Assignment of Lease dated as of November 1, 1983 between the Developer and Society National Bank, Indiana (formerly, St. Joseph Bank & Trust Co.)\\, as supplemented by the First Supplement to the Mortgage, Assignment of Lease dated as of July 1, 1993 (collectively, the "Assignment of Lease") and the Security Agreement dated November 15, 1983 between the Developer and Society National Bank, Indiana (formerly, St. Joseph Bank & Trust Co.)\\, as supplemented by the First



Supplement to the Security Agreement dated as of July 1, 1993 (collectively, the "Security Agreement").

2.3 Assignment of Loan Agreement; Manner of Payment. As security for the Bonds, the Issuer has, by the Indenture, assigned to the Trustee all of its right, title and interest in and to this Agreement, except for the right of the Issuer to receive indemnity against claims pursuant to Section 3.11 hereof. The Developer consents and agrees to such assignment. The Developer covenants to fully perform, in timely fashion, all of its covenants, agreements and obligations under this Agreement, and to fully perform in timely fashion, all of its covenants, agreements and obligations under the Note, Mortgage, Assignment of Lease, Security Agreement and Regulatory Agreement. The Developer covenants to make all payments required by the Developer under this Agreement to the Trustee, and to make all payments required by the Developer under the Note, the Mortgage or Regulatory Agreement to the Servicer (or the Trustee, as mortgagee under the Mortgage, if the Servicing Agreement is no longer in effect), all without setoff, defense or counterclaim by reason of any dispute which the Developer may have with the Issuer, the Servicer or the Trustee; provided, however, that following the making of any such payment, nothing herein contained shall be construed as prohibiting the Developer from instituting any action against the Issuer, the Servicer or the Trustee arising out of any such dispute.

### ARTICLE III

#### COVENANTS

3.1 Deficiencies in Revenues; Maintenance of Debt Service Reserve Fund. (a) If for any reason amounts received by the Trustee (as mortgagee under the Mortgage) on the account of the principal and interest payments due under the Note, together with other moneys held by the Trustee and then available under the terms of the Indenture, would not be sufficient to make the corresponding payments of principal of and interest on the Bonds when such payments are due, the Developer will pay to the Trustee (as the Issuer's assignee hereunder, and not as mortgagee under the Mortgage) the amounts required from time to time to make up any such deficiency.

(b) The Developer covenants that it shall, at its option, within 60 days of withdrawal by the Trustee of funds from the Debt Service Reserve Fund (as the Issuer's assignee hereunder, and not as mortgagee under the Mortgage), and within 60 days of the valuation of the Debt Service Reserve Fund, pay to the Trustee the amount of such withdrawal and the amount by which the value of the the Debt Service Reserve Fund was less than the Debt Service Reserve Fund Requirement (as defined in the Indenture).

3.2 Tax-Exempt Status of Series A Bonds; Series A Bonds Not to Become Arbitrage Bonds. (a) The Issuer and the Developer hereby covenant to each other and to the holders of the Series A Bonds that they will neither take any action nor execute any agreement or other instrument, nor to their knowledge suffer the same to be done, which would adversely affect the validity, enforceability or tax-exempt status of the Series A Bonds. Without limiting the

generality of the foregoing, the Developer covenants that during the period commencing with the date of delivery of the 1983 Bonds and ending November 15, 1985 it did not enter into any contract or agreement with any person, other than the Lease, or amend any such contract or agreement with respect to the term thereof or the compensation to be paid thereunder, or in any way change the ownership of the Project.

(b) The Issuer and the Developer hereby covenant to the holders of the Series A Bonds that, notwithstanding any other provision of this Agreement or any other instrument, they will neither make, nor instruct the Trustee to make, any investment or other use of the proceeds of the Series A Bonds which would cause the Series A Bonds to be arbitrage bonds under Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, and that they will comply with the requirements of such Section and regulations throughout the term of the Series A Bonds.

**3.3 Limitation on Capital Expenditures.** (a) The Developer represents and warrants that it did not make, or permit a "related person" or "principal user" of the Project to make, any "capital expenditures" (as such terms were used in Section 103 of the Internal Revenue Code of 1954, as amended, and the regulations thereunder (the "1954 Code")) with respect to the Project or other facilities located in Fort Wayne, Indiana, or facilities adjacent to or integrated with such facilities, of which the Developer or any "related person" is the owner, occupant or other "principal user" (as used in Section 103 of the 1954 Code) which, when added to the face amount of the Series A Bonds, would have made the total of such face amount, plus all such capital expenditures for the six (6) year period beginning three (3) years prior to the date of issue of the 1983 Bonds, exceed \$10,000,000.

(b) In the year following the Developer's fiscal year in which the 1983 Bonds were issued under the 1983 Indenture, and in each year thereafter for a period of three (3) years, the Developer filed in the office of the Internal Revenue Service where the Developer was required to file its federal income tax return, a supplemental statement listing by date and amount any capital expenditures made by the Developer and all such related persons and principal users with respect to facilities located in Fort Wayne, Indiana, or facilities adjacent to or integrated with such facilities, in the preceding calendar year since the date of issue of the 1983 Bonds.

**3.4 Insurance.** (a) Commencing on the date the Project was first occupied, the Developer has maintained or caused to be maintained, and from the date of the issuance of the Bonds, the Developer will continue to maintain or cause to be maintained with one or more insurance companies authorized and qualified to do business under the laws of the State of Indiana the following kinds of insurance:

- (i) the insurance required by [paragraph 6] of the Mortgage;
- (ii) comprehensive public liability insurance relating to operation of the Project, and automobile liability insurance with limits for liabilities arising from the death or bodily injury of persons of not less than \$1,000,000 per person or occurrence and an aggregate limitation for claims made in any one year of not less than \$1,000,000 and

\$250,000 for damage to the property of others (with an aggregate property damage limitation of not less than \$500,000);

(iii) medical liability, malpractice and other health care facility liability insurance with limits for liabilities arising from professional services performed by the Developer or the User of not less than \$1,000,000 per person or occurrence, and an aggregate limitation for claims made in any one year of not less than \$1,000,000; and

(iv) Workers' Compensation insurance, disability insurance and each other form of insurance which the Developer is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees, provided that such insurance may be provided under a self-insurance program approved by the State of Indiana.

(b) The policies for the insurance required by paragraphs (a)(i) and (a)(ii) of this Section shall be nonassessable and shall be written in the names of FHA, the Trustee (as mortgagee under the Mortgage) and the Developer (and, as appropriate, of any lessee or similarly interested party) as their interests may appear and shall be made payable as provided therein. The policies for such insurance shall not be cancellable without at least 30 days' written notice to the Trustee and shall provide that all losses thereunder which are payable to the Trustee shall be paid to the Trustee notwithstanding any act or neglect of the Developer and the User or other interested party which might otherwise result in a forfeiture of such insurance.

(c) The insurance policies required hereunder or insurance certificates with respect thereto shall be filed with the Trustee, and each such insurance policy shall fully comply with any further requirements imposed by the terms of the Mortgage and the Regulatory Agreement. To the extent that the Developer fails to provide the insurance required by this Section 3.4, the Developer agrees that the Trustee may provide the same at the Developer's expense.

(d) Any appraisal, adjustment or settlement agreed upon between the Developer and any insurer (and any third party, other than the Trustee, in interest) which is evidenced by a certificate of any general partner of the Developer shall be accepted by the Trustee.

**3.5 Application of Proceeds of Insurance.** (a) [Paragraph 7] of the Mortgage provides that amounts paid by any insurance company in pursuance of a contract of hazard insurance shall be paid to the mortgagee under the Mortgage, and, at its option, may be applied to the debt or released for the repairing or rebuilding of the premises. The Trustee (as mortgagee under the Mortgage) shall recover and hold, or the Servicer shall recover and hold, for the account of the Trustee, pursuant to the Servicing Agreement, if then in effect, all proceeds of hazard insurance payable to the Trustee, provided that the Developer shall have the sole right to settle any insurance claims. Pending the application of such insurance proceeds pursuant to paragraph (b) below, such insurance proceeds shall be held by the Trustee (as mortgagee under the Mortgage) in a separate subaccount in the Bond Fund, or shall be held by the Servicer, for the account of the Trustee pursuant to the Servicing Agreement, if then in effect, in the Insurance and Condemnation Proceeds Fund established pursuant to the Servicing Agreement. No such amounts

may be so applied or released without the prior approval of FHA. In the event of any damage to any property covered by insurance as required by Section 3.4, the Developer shall immediately notify the Trustee and the Servicer, shall prepare an estimate of the costs of repairing or replacing the damaged property, and (if appropriate) in cooperation with an independent architect, mutually agreed to by the Developer and the Trustee, prepare plans and specifications therefor. If the fire and extended coverage insurance proceeds exceed \$25,000, the estimate of costs of repair or replacement and a copy of any such plans and specifications shall be filed with the Trustee, the Servicer and FHA.

(b) If, within 90 days from the occurrence of such damage or destruction, the Developer and the Trustee agree in writing that the efficient utilization of the Project has not been impaired to such extent that the ability of the Developer, taking into account all financial resources of the Developer, to make the payments required under the Note, the Mortgage and Regulatory Agreement will have been materially adversely affected prior to the completion of the replacement or restoration of such part of the Project so damaged or destroyed, the proceeds of insurance received by reason of such occurrence (after deducting any reasonable expenses incurred by the Trustee, the Servicer or the Developer in collecting the same) shall, subject to any applicable FHA requirements, be applied to the repair or replacement of the property damaged or destroyed. If no such agreement shall be reached within such 90-day period, all respective insurance proceeds (after such deduction) shall, subject to any applicable FHA requirements, be credited to prepayment of the last installments of principal becoming due under the Note and the Mortgage.

(c) If the insurance proceeds are to be credited to prepayment of the last installments of principal due under the Note and the Mortgage, such proceeds shall then become "Net Revenues" (as defined in the Indenture) and shall be deposited in the Bond Fund established under the Indenture and applied to the redemption of Bonds.

(d) If the insurance proceeds are to be applied to the repair or replacement of the property damaged or destroyed, and if such proceeds exceed \$25,000, the insurance proceeds and any income earned in the investment thereof shall be disbursed by the Trustee, or by the Servicer from the Insurance and Condemnation Proceeds Fund, as the case may be, upon receipt of written requisition therefor, each signed by an authorized officer of the Developer. If such insurance proceeds are \$25,000 or less, such proceeds shall, at the request of the Developer, be paid to or upon the order of the Developer, which shall keep them separate from all other funds and use them only to pay the costs of repair or replacement of the property damaged or destroyed. The Developer shall commence and diligently prosecute, or cause to be commenced and diligently prosecuted, the repair or replacement of the property damaged or destroyed in accordance with any plans and specifications approved by an independent architect mutually agreed upon by the Developer and the Trustee and shall pay any amounts required for the completion of such repair or replacement if the insurance proceeds (including any income earned on the investment thereof) are insufficient therefor. If, following the completion of such repair or replacement, any moneys resulting from such proceeds and income from the investment thereof remain in the Bond Fund, such moneys shall, subject to any applicable FHA requirements, be paid to the Developer.

(e) In the event of any loss or liability for damages for personal injury or death occasioned by reason of the operation of any property or motor vehicles covered by insurance as required by Section 3.4, the public liability insurance, automobile liability insurance or medical liability, malpractice or health care facility liability insurance proceeds shall be paid in respect of such loss or liability.

3.6 Application of Proceeds of Condemnation Compensation. (a) [Paragraph 8] of the Mortgage provides that all proceeds of condemnation shall be assigned to the mortgagee under the Mortgage, to the extent of any indebtedness that remains unpaid. The Trustee (as mortgagee under the Mortgage) shall recover and hold, or the Servicer shall recover and hold, for the account of the Trustee pursuant to the Servicing Agreement, if then in effect, all such proceeds of condemnation. Pending the application of such condemnation proceeds pursuant to paragraph (b) below, such condemnation proceeds shall be held by the Trustee (as mortgagee under the Mortgage) in a separate subaccount in the Bond Fund, or shall be held by the Servicer, for the account of the Trustee pursuant to the Servicing Agreement, if then in effect, in the Insurance and Condemnation Proceeds Fund established pursuant to the Servicing Agreement. No such amounts may be applied or released without the prior approval of FHA. Upon the institution of any condemnation proceedings with respect to the Project, or any portion thereof, the Developer shall immediately notify the Trustee and the Servicer. The Developer shall have the sole right to settle any condemnation award.

(b) The Trustee (as mortgagee under the Mortgage) shall determine whether to apply the same to payment of the installments last due under the Note, and if such proceeds are applied to prepayment of the Note and the Mortgage, such proceeds shall then become Net Revenues and shall be deposited in the Bond Fund and applied to the redemption of Bonds. Any such proceeds received from a taking of less than substantially all of the Project shall be applied as follows:

(i) if no part of the improvements included in the Project is taken or damaged, and the Trustee (as mortgagee under the Mortgage) in its discretion determines that the efficient utilization of the Project is not impaired by such taking, then all of the condemnation proceeds (after deducting the reasonable expenses incurred by the Trustee, the Servicer or the Developer in collecting the same) shall be paid to the Developer subject to any applicable FHA requirements;

(ii) if any part of such improvements is taken or damaged, and if the Trustee (as mortgagee under the Mortgage) in its discretion determines that such repair, rebuilding, restoration or rearrangement of the Project is not possible so as to restore the operational condition of the Project to substantially the condition existing immediately preceding such condemnation, then all of the condemnation proceeds (after deducting the reasonable expenses incurred by the Trustee, the Servicer or the Developer in collecting the same) shall, subject to any applicable FHA requirements, be credited to the prepayment of last installments of principal becoming due under the Note and the Mortgage, shall become Net Revenues and shall be deposited into the Bond Fund and applied to the redemption of Bonds; and

(iii) if any part of such improvements is taken or damaged, and if the Trustee (as mortgagee under the Mortgage) in its discretion so determines, then all of the condemnation proceeds (after deducting the reasonable expenses incurred by the Trustee, the Servicer or the Developer in collecting the same) and any income earned on the investment thereof, shall, subject to any applicable FHA requirements, be disbursed to the Developer for the repair, rebuilding, restoration or rearrangement of the Project, insofar as may be possible, so as to restore the operational condition thereof to that existing immediately preceding such condemnation, such net condemnation proceeds to be disbursed by the Trustee, or by the Servicer from the Insurance and Condemnation Proceeds Fund upon receipt of written requisition therefor, each signed by an authorized officer of the Developer; and, in such event, the Developer shall commence and diligently prosecute, or cause to be commenced and diligently prosecuted, such repair, rebuilding, restoration or rearrangement of the Project, and shall pay any amounts required for the completion thereof if the condemnation proceeds (including any income earned on the investment thereof) are insufficient therefor; and if, following the completion of such repair, rebuilding, restoration or rearrangement, any moneys remain in the Condemnation Subaccount or the Insurance and Condemnation Proceeds Fund, such moneys shall, subject to any applicable FHA requirements, be paid to the Developer.

3.7 Prepayments Under Note. The Developer shall give 60 days' prior written notice to the Servicer and the Trustee before making any optional prepayment under the Note.

3.8 No Defense or Setoff. The obligations of the Developer to make the payments required under this Agreement, the Note, the Mortgage and the Regulatory Agreement shall be absolute and unconditional without defense or setoff by reason of any default by the suppliers, materialmen or laborers or by the Issuer under this Agreement, or under any other agreement between the Developer and the Issuer, or for any other reason, including, without limitation, destruction of or damage to the Project, commercial frustration of purpose or failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement, it being the intention of the parties that the payments required by this Agreement, the Note, the Mortgage and the Regulatory Agreement will be paid in full when due without any delay or diminution whatsoever; provided, however, that following the making of any such payment nothing herein contained shall be construed as prohibiting the Developer from instituting any action against the Issuer, the Trustee or the Servicer arising out of a dispute concerning such payment.

3.9 Maintenance and Operation of Project; Partnership Existence. The Developer represents and warrants that from the date the Project was first occupied the Project has been maintained and operated as a nursing home and related activities and shall, so long as any of the Bonds are Outstanding, continue to be maintained and operated as a nursing home and related activities, in accordance with applicable regulations and standards of the Indiana State Board of Health. The Developer covenants that it shall maintain its partnership existence, and that it shall not dispose of all or substantially all of its assets or enter into any consolidation or merger unless the successor or surviving entity is a corporation organized under the laws of a state within the

United States, is qualified to do business in Indiana and assumes in writing all obligations of the Developer under the Note, the Mortgage, the Regulatory Agreement, the Assignment of Lease, the Security Agreement and this Agreement.

3.10 Payment of Trustee's Compensation and Expenses. To the extent not paid as provided in Section 7.05 of the Indenture, the Developer will pay the compensation and expenses of the Trustee, including all costs of redeeming Bonds, and will indemnify the Trustee against any liabilities incurred in good faith and without negligence in the exercise and performance of its powers and duties under the Indenture. Such compensation is to be an initial fee in the amount of \$            and an annual fee in the amount of \$        % of the aggregate outstanding principal amount of the Bonds, with a minimum of \$2,500.

3.11 Indemnity Against Claims. The Developer will protect, exonerate, defend, indemnify and save the Issuer and the Trustee, and their members, officers, officials, employees and agents and the Commission harmless from and against any and all costs or liabilities which may arise or have arisen out of the Project or the making of the loan hereunder (except for any costs or liabilities resulting from the Issuer's gross negligence or willful misconduct or the Trustee's negligence or willful misconduct), and from and against any and all losses, damages, costs, expenses or liabilities based on personal injury, death or loss or damage to property suffered or incurred by any person, firm or corporation arising out of or attributable to the construction, use, operation or maintenance of the Project, from any breach or default on the part of the Developer in the performance of any covenant to be performed pursuant to the terms of this Agreement, the Note, the Mortgage, the Assignment of Lease, the Security Agreement or the Regulatory Agreement or arising from any act of negligence of the Developer or any of the Developer's agents, contractors, servants, employees or licensees, performing work on or about the Project; and from and against all costs, counsel fees, expenses and liabilities incurred in or about the defense of any such claims or action or proceedings brought thereon.

The Issuer and Trustee, respectively, will give prompt written notice to the Developer of any claim asserted against it or them, as the case may be, which claim, if sustained, may result in liability on the part of the Developer hereunder; provided, however, that the failure on the part of the Issuer or the Trustee to give such notice shall not relieve the Developer from its obligation under this Section 3.11; provided that the Developer shall not be liable for any loss to the extent such loss is due to the failure to give such notice. Upon receipt of such notification, the Developer will assume the defense thereof, with full power to litigate, compromise or settle the same in its sole discretion.

## ARTICLE IV

### DEFAULTS AND REMEDIES

4.1 Events of Default. Failure by the Developer to observe and perform any covenant, agreement or obligation contained in this Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting the same to be remedied, has been given to the Developer by the Servicer or the Trustee, shall constitute an "Event of Default"

hereunder; provided that if such failure is of such nature that it can be corrected within a reasonable time (as agreed to by the Servicer and the Trustee) and if the Developer promptly institutes corrective action and is diligently pursuing the same, an Event of Default shall be the failure by the Developer to observe and perform such covenant, agreement or obligation within such reasonable time.

4.2 Defaults Under Agreements. The Developer covenants to notify the Trustee immediately upon receipt of notice of any default under the Note, the Mortgage, the Regulatory Agreement, the Assignment of Lease or the Security Agreement.

4.3 Remedies. Upon the occurrence of an Event of Default, in addition to any other rights which the Issuer or the Trustee may have under law, the Issuer or the Trustee may withhold further performance under this Agreement (including, without limitation, withholding further disbursements from the Mortgage Account, but only if there has occurred an event of default under the Note or the Mortgage) and may also take whatever action at law or in equity may appear necessary or desirable to enforce the performance and observation by the Developer of any of its obligations, agreements or covenants under this Agreement and to collect any payments due or to obtain other remedies; provided, however, that prior to commencing any action, suit or proceeding hereunder against the Developer, the Issuer or the Trustee, as the case may be, shall have received the prior written consent of FHA, if required by FHA.

## ARTICLE V

### MISCELLANEOUS

5.1 Limitation of Liability of the Issuer. Notwithstanding any other provision of this Agreement, in the event of any default by the Issuer hereunder or under the Indenture, any liability of the Issuer shall be enforceable only out of its interest under this Agreement and the moneys to be paid by the Developer, and there shall be no recourse for any claim based on this Agreement, the Indenture or the Bonds against any other property of the Issuer or the Commission or against any officer, employee, official, member or agent, past, present or future, of the Issuer or any successor body as such, either directly or through the Issuer or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, and the liability of the Issuer shall be limited to its interest under this Agreement and the moneys to be paid by the Developer, and the lien of any judgment shall be restricted thereto. In the event of any default by the Issuer hereunder, the liability of the Issuer to the Developer shall be enforceable only out of its interest under this Agreement, and there shall be no other recourse by the Developer against the Issuer or any of the property now or hereafter owned by it.

5.2 Limitation of Developer's Liability. Except for the liabilities of the Developer under Section 3.11, notwithstanding any other provision of this Agreement, the liability of the Developer or of any of its partners under this Agreement shall be limited to their interest in the Project and the revenues and receipts derived therefrom, and no recourse shall be had against any other properties or funds of the Developer or any of its partners for the payment of any



amounts due under this Agreement or in respect of the principal of or interest on the Bonds, or the performance or nonperformance of any of the covenants, agreements or obligations of the Developer under this Agreement or the Indenture.

5.3 Notices. Notices hereunder shall be given to the addresses shown below or to such other address as shall be filed in writing with the parties hereto:

The Issuer	-	City of Fort Wayne City-County Building One \Main Street Fort Wayne, Indiana 46802 <u>Attention: Controller</u>
The Developer	-	Health Quest Realty X 315 West Jefferson South Bend, Indiana 46601
The Trustee	-	Society National Bank, Indiana Corporate Trust Department 202 South Michigan Street South Bend, Indiana 46601

5.4 Assignments. This Agreement may not be assigned by either of the parties hereto without the consent of the other party hereto, except that the Issuer may assign its rights to the Trustee pursuant to Section 2.3 hereof.

5.5 Illegal, Etc. Provisions Disregarded. In case any provision of this Agreement or of the Note or the Mortgage shall for any reason be held invalid, illegal or unenforceable in any respect, this Agreement shall be construed as if such provision had never been contained herein or therein.

5.6 Amendments. This Agreement may not be amended except by an instrument in writing signed by all of the parties hereto and, if such amendment occurs after the issuance of any of the Bonds, consented to by the Trustee, if necessary, in accordance with the provisions of the Indenture.

5.7 Term of Agreement. This Agreement shall become effective upon its delivery and shall continue in force for a term of the lesser of: (i) 20 years from the date hereof, unless at the expiration of such 20-year term, all Bonds have not been fully paid or provision for such payment has not been made as provided in Section 9.01 of the Indenture; or (ii) the date on which the principal of and interest on the Bonds shall have been fully paid, or provision therefor shall have been made as provided in Section 9.01 of the Indenture.

5.8 Successors and Assigns. All covenants, promises and agreements contained in this Agreement by or on behalf of the Developer, the Servicer or the Issuer shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

5.9 Applicable Law. This Agreement shall be governed by, and interpreted under, the laws of the State of Indiana.

5.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute but one and the same document.

WITNESS the due execution of this Loan Agreement as of the day and the year first mentioned above.

[SEAL]

CITY OF FORT WAYNE, INDIANA

Attest:

By: \_\_\_\_\_  
Name:  
Title: Clerk

By: \_\_\_\_\_  
Name:  
Title: Mayor

HEALTH QUEST REALTY X

By \_\_\_\_\_  
Name: Anthony Wright  
Title: Attorney in Fact

# PRELIMINARY PRIVATE PLACEMENT MEMORANDUM DATED JULY \_\_, 1993

New Issue

Moody's: \_\_\_\_\_  
(See "RATING" herein)

[In the opinion of Bond Counsel, assuming compliance on a continuing basis with certain requirements of the Internal Revenue Code of 1954, as amended, and with certain provisions of the Internal Revenue Code of 1986, as amended, and subject to the exceptions under "TAX MATTERS" herein, under existing laws, regulations, rulings and judicial decisions, interest on the Series 1993A Bonds is excludable from gross income for federal income tax purposes. Interest on the Series 1993A Bonds is not a tax preference item directly subject to alternative minimum tax on individuals and corporations. No opinion is expressed as to the excludability from gross income for federal income tax purposes of interest on any Series 1993A Bond for any period during which such Series 1993A Bond is held by a person who, within the meaning of Section 147 of the Internal Revenue Code of 1986, as amended, is a "substantial user" of facilities financed from Bond proceeds or a "related person." Interest on the Series 1993B Bonds is subject to federal income taxation. The interest on the Series 1993A Bonds is exempt from taxation by the State of Indiana for all purposes except inheritance taxes and the franchise tax applicable to corporations transacting the business of a financial institution in the State of Indiana.] See "TAX MATTERS" herein.

## CITY OF FORT WAYNE, INDIANA

**\$3,720,000\***

### HEALTH CARE FACILITIES REVENUE REFUNDING BONDS

#### HEALTH QUEST REALTY X ISSUE

#### (FHA INSURED MORTGAGE)

#### SERIES 1993A

**\$345,000\***

### HEALTH CARE FACILITIES TAXABLE REVENUE BONDS

#### HEALTH QUEST REALTY X ISSUE

#### (FHA INSURED MORTGAGE)

#### SERIES 1993B

Dated: August 1, 1993

Due as shown below

Initially, interest on the Series 1993A Bonds is payable on the first day of each month, or as otherwise described herein. Interest on the Series 1993B Bonds is payable on February 1 and August 1 of each year, commencing February 1, 1994. The purchasers of the Bonds will not receive certificates representing their interest in the Bonds. The Bonds will be registered in the name of Cede & Co., as registered owner and nominee of The Depository Trust Company, New York, New York, which will act as security depository for the Bonds. The Bonds are issuable as fully registered bonds in the denomination of \$5,000 principal amount, or any multiple thereof. Principal of, and premium, if any, and interest on the Bonds will be payable by Society National Bank, Indiana, as trustee (the "Trustee"), to Cede & Co.

The Bonds are being issued by the City of Fort Wayne, Indiana (the "Issuer"), to refund bonds (the "1983 Bonds") previously issued by the Issuer the proceeds of which provided money for the funding of a mortgage loan (the "Mortgage Loan") to Health Quest Realty X, an Indiana limited partnership (the "Developer"), to finance a skilled nursing home facility located in Fort Wayne, Indiana (the "Project"), owned by the Developer. The Mortgage Loan is insured by the Federal Housing Administration ("FHA"), an organizational unit within the United States Department of Housing and Urban Development ("HUD"), pursuant to Section 232 of the National Housing Act of 1934, as amended.

#### MATURITY SCHEDULE\*

\$ \_\_\_\_\_ % Series 1993A Bonds Due August 1, \_\_\_\_  
\$ \_\_\_\_\_ % Series 1993B Bonds Due August 1, \_\_\_\_  
Price of all Bonds: \_\_\_\_ %  
(Plus accrued interest, if any, to be added)

The Bonds are subject to redemption prior to maturity at the times and to the extent described herein. See "THE BONDS — Redemption" herein.

THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER. NEITHER THE ISSUER NOR ANY PERSONS EXECUTING THE BONDS NOR ANY OTHER MEMBER, OFFICER, OFFICIAL, EMPLOYEE, OR AGENT OF THE ISSUER SHALL BE LIABLE PERSONALLY ON THE BONDS BY REASON OF THE ISSUANCE THEREOF. THE BONDS SHALL NOT BE A DEBT OF THE STATE OF INDIANA OR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN AS A LIMITED OBLIGATION OF THE ISSUER), AND NEITHER THE STATE OF INDIANA OR ANY POLITICAL SUBDIVISION THEREOF (OTHER THAN AS A LIMITED OBLIGATION OF THE ISSUER) SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER SPECIFICALLY PLEDGED THERETO. THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY OR THE FEDERAL HOUSING ADMINISTRATION AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

The Bonds are offered when, as and if issued and received by the Placement Agent, subject to the approval of legality by Kutak Rock, Washington, D.C., Bond Counsel. Certain legal matters relating to the Issuer will be passed upon by its co-counsel, Helmke Beams Boyer & Wagner, Fort Wayne, Indiana, and Barnes & Thornburgh, South Bend, Indiana; for the Developer by its counsel, Charles Loeser, Esq., South Bend, Indiana; and for the Placement Agent by its counsel, Arter Hadden Haynes & Miller, Washington, D.C. It is expected that the Bonds will be available for delivery to The Depository Trust Company in New York, New York, on or about August \_\_, 1993.

**BANK ONE, COLUMBUS, N.A.**  
Placement Agent

August \_\_, 1993

\*Preliminary; subject to change.

This Preliminary Private Placement Memorandum and the information contained herein are subject to completion or amendment. Under no circumstances shall this Preliminary Private Placement Memorandum constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

No dealer, broker, salesman or other person has been authorized by the Placement Agent or the Issuer to give any information or to make any representations with respect to the Bonds other than those contained in this Private Placement Memorandum, and, if given or made, such information or representations must not be relied upon as having been authorized by any of the foregoing. This Private Placement Memorandum does not constitute an offer to sell nor the solicitation of an offer to buy nor will there be any sale of the Bonds by any person in any jurisdiction in which such offer, solicitation or sale is not authorized or in which the person making such offer, solicitation or sale is not qualified to do so or to any person to whom it is unlawful to make such offer, solicitation or sale. The information set forth herein has been obtained from sources that are believed to be reliable, but it is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation of the Placement Agent or the Issuer. The information and expressions of opinion stated herein are subject to change without notice. The delivery of this Private Placement Memorandum will not, under any circumstances, create any implication that there has been no change in the information or opinions set forth herein since the date hereof.

IN CONNECTION WITH THE OFFERING OF THE BONDS, THE PLACEMENT AGENT MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF SUCH BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

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## **PRIVATE PLACEMENT MEMORANDUM**

**CITY OF FORT WAYNE, INDIANA**  
**\$3,720,000\***  
**HEALTH CARE FACILITIES REVENUE REFUNDING BONDS**  
**HEALTH QUEST REALTY X ISSUE**  
**(FHA INSURED MORTGAGE)**  
**SERIES 1993A**

**\$345,000\***  
**HEALTH CARE FACILITIES TAXABLE REVENUE BONDS**  
**HEALTH QUEST REALTY X ISSUE**  
**(FHA INSURED MORTGAGE)**  
**SERIES 1993B**

### **INTRODUCTION**

This Private Placement Memorandum is provided to furnish information in connection with the issuance and sale by the City of Fort Wayne, Indiana (the "Issuer") of \$3,720,000\* aggregate principal amount of its Health Care Facilities Revenue Refunding Bonds, Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993A (the "Series 1993A Bonds") and of \$345,000\* aggregate principal amount of its Health Care Facilities Taxable Revenue Bonds, Health Quest Realty X Issue (FHA Insured Mortgage) Series 1993B (the "Series 1993B Bonds" and, collectively with the Series 1993A Bonds, the "Bonds"). The Bonds will be issued pursuant to Title 36, Article 7, Chapter 12 of the Indiana Code, as amended (the "Act"), and a Trust Indenture dated as of August 1, 1993 (the "Indenture"), between the Issuer and Society National Bank, Indiana, as trustee (the "Trustee").

The Bonds are being issued by the Issuer to provide money to refund the Issuer's Health Care Facilities Revenue Bonds, Health Quest Realty X Issue (FHA Insured Mortgage), Series A (the "1983 Bonds") and to pay certain costs of issuance of the Bonds. The 1983 Bonds were issued by the Issuer to finance a mortgage loan (the "Mortgage Loan") made to Health Quest Realty X, an Indiana limited partnership (the "Developer"), to finance the acquisition and rehabilitation of a skilled nursing home facility located in the City of Fort Wayne, Indiana (the "Project").

The Mortgage Loan is evidenced by the Developer's mortgage note (the "Mortgage Note") and secured by a first lien mortgage (the "Mortgage") on the Project. The Mortgage Note has been endorsed for insurance by the Federal Housing Administration ("FHA"), an organizational unit within the United States Department of Housing and Urban Development ("HUD"), pursuant to the provisions of Section 232 of the National Housing Act of 1934, as amended (the "National Housing Act"). Under applicable regulations, mortgage insurance benefits are payable, at the option of HUD, either in debentures issued by HUD ("FHA Debentures") or in cash. See "FHA INSURANCE" herein. The Mortgage Loan is to be refinanced and the 1983 Bonds to be refunded pursuant to a Loan Agreement, dated as of August 1, 1993 (the "Loan Agreement"), between the Issuer and the Developer.

The Bonds will be secured by a pledge of all right, title and interest of the Issuer in (i) the Loan Agreement, the Mortgage Loan and the Mortgage Note, the Mortgage and all other security therefor or certificates or instruments evidencing the same, and all amendments, modifications and renewals thereof, and all FHA mortgage insurance or casualty insurance proceeds or condemnation awards payable with respect thereto, and any interest earnings thereon (reserving, however, certain rights of the Issuer); (ii) any money held under the Indenture by the Trustee (except for the Rebate Fund), including the proceeds of the Bonds and the interest, profits and other income derived from the investment thereof; and (iii) all funds, money and securities and any and all other rights and interests in property under the Indenture

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\*Preliminary; subject to change

(except funds held in the Rebate Fund thereunder) from time to time conveyed, mortgaged, pledged, assigned or transferred as and for additional security for the Bonds by the Issuer.

Brief descriptions of the Bonds, the security for and sources of payment of the Bonds, the Issuer, the Developer, the Project, the FHA Insurance, the Indenture, the Loan Agreement, the Mortgage Note and Mortgage, and other documents are included in this Private Placement Memorandum. All references to such documents and agreements are qualified in their entirety by reference to such documents and agreements, copies of which are available for inspection at the office of the Trustee. The order and placement of information in this Private Placement Memorandum are not to be deemed a determination of relevance, materiality or importance, and this Private Placement Memorandum must be considered in its entirety.

Capitalized terms used herein and not otherwise defined are to have the same meaning ascribed to them as in the Indenture.

## **THE ISSUER**

The Issuer is a municipal corporation and a political subdivision of the State of Indiana.

## **THE BONDS**

The Bonds are available in book-entry form only. See "BOOK-ENTRY ONLY SYSTEM" below. So long as Cede & Co. is the registered owner of the bonds, as nominee of The Depository Trust Company, New York, New York ("DTC"), references herein to the Bondholders or registered owners of the Bonds mean Cede & Co. and not the beneficial owners of the Bonds.

### **General**

The Bonds are issuable in denominations of \$5,000 principal amount or any integral multiple thereof. The Bonds will be dated as of August 1, 1993. The Bonds will mature on the dates and in the amounts and bear interest from their dates at the rates set forth on the cover page hereof, except that interest accruing on the Series 1993A Bonds prior to the Closing Date will not be paid. Initially, interest on the Series 1993A Bonds is payable on the first day of each month, and interest on the Series 1993B Bonds will be payable semiannually on February 1 and August 1 of each year, commencing February 1, 1994 (each a "Payment Date"), in accordance with the provisions of the Indenture, whether at maturity, upon acceleration or otherwise as provided therein. Upon the conditions set forth in the Indenture, the interest on the Series 1993A Bonds will be payable on February 1 and August 1, instead of on the first day of each month. Interest will be calculated and due on a basis of a 360-day year consisting of twelve 30-day months. Principal of and premium, if any, and interest on the Bonds will be payable by the Trustee to Cede & Co.

### **Redemption**

Optional Redemption. The Bonds are subject to redemption at any time at the option of the Developer from optional prepayments on the Mortgage Note or from proceeds of refunding bonds, in either case in an amount not to exceed \$601,620 in any calendar year, at a redemption price equal to the principal amount thereof, without premium, plus accrued interest to the redemption date.

The Bonds are also subject to optional redemption as a whole at any time or in part on any February 1 or August 1, following and to the extent of optional prepayments on the Mortgage Loan in excess of \$601,620 in any calendar year in accordance with the prepayment restrictions set forth therein by the Developer or from the proceeds of refunding bonds at the redemption prices set forth in the table

below, expressed as percentages of their principal amount of the Bonds, plus accrued interest to the redemption date:

<u>Redemption Dates</u>	<u>Redemption Prices</u>
Closing Date, through July 31, 1994	102%
August 1, 1994, through July 31, 1995	101½
August 1, 1995, through July 31, 1996	101
August 1, 1996, through July 31, 1997	100½
August 1, 1997, and thereafter	100

In the event of an optional redemption of Bonds on a date on which the redemption price includes a redemption premium, the Trustee is not to give notice of such redemption unless (i) the Trustee has received an unqualified opinion of nationally recognized bankruptcy counsel, acceptable to the Trustee, to the effect that payment of such money to Bondowners would not constitute a voidable preference under Section 547 or be recoverable under Section 550(a) of the United States Bankruptcy Code in the event of the bankruptcy of the Developer; and (ii) the Trustee has received the prepayment of the Mortgage Loan.

Special Mandatory Redemption. The Bonds are subject to Special Mandatory Redemption prior to maturity (i) as a whole or in part, at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the redemption date in direct order of maturity on each February 1 or August 1 from excess revenues transferred from the Bond Fund to the Redemption Fund for such purpose, and (ii) as a whole, on any February 1 or August 1 for which timely notice of redemption can be given, if the sum of the amount held in the Bond Fund, the Expense Fund, the Debt Service Reserve Fund and the Redemption Fund equals or exceeds the redemption price of the Bonds then outstanding, plus the amount of expenses then payable under the Indenture. See "THE INDENTURE — Application of Net Revenues; Bond Fund" herein.

Casualty and Condemnation Redemption. The Bonds are subject to redemption as a whole or in part on the earliest practicable date for which proper notice of redemption can be given, at a redemption price equal to the principal amount thereof, plus accrued interest to the date fixed for redemption to the extent the proceeds of any condemnation award or insurance recovery are applied to the prepayment of the Mortgage Note.

Extraordinary Redemption From FHA Mortgage Insurance Benefits in Cash. To the extent that FHA mortgage insurance benefits are paid to the Trustee in cash, the Trustee is to redeem the Bonds, as a whole or in part, on the earliest practicable date for which proper notice of redemption can be given at a redemption price equal to the principal amount thereof, plus accrued interest to the date fixed for redemption.

Redemption After Receipt of FHA Mortgage Insurance Benefits in Debentures. If FHA Mortgage Insurance benefits are paid to the Trustee in FHA Debentures and such FHA Debentures can be sold or tendered to HUD at a price sufficient (together with other amounts held under the Indenture other than the Rebate Fund) to redeem the Bonds, the Trustee is to redeem all the Bonds therefrom on the earliest practicable date for which proper notice of redemption can be given at a redemption price equal to the principal amount thereof, plus accrued interest to the date fixed for redemption.

Redemption in the Event of Mortgage Loan Default or Bankruptcy. The Bonds are to be called for redemption as a whole or in part without premium at a redemption price of 100% of the principal amount, plus accrued interest to the date of redemption in the event that prepayment of the Mortgage Note is required to be made (i) pursuant to applicable rules, requirements or policies of HUD in order to avoid a FHA mortgage insurance claim or otherwise or (ii) without premium while under the supervision of a trustee in bankruptcy proceedings.



**Redemption Due to Reduction in Debt Service Reserve Fund.** In the event of a redemption of Bonds as a result of a reduction in the principal balance of the Mortgage Loan, the Trustee is to transfer from the Debt Service Reserve Fund to the Redemption Fund any amount by which the balance maintained following such redemption in the Debt Service Reserve Fund exceeds the Debt Service Reserve Fund Requirement (as such term is defined under the caption "THE INDENTURE — Application of Net Revenues; Bond Fund" herein); provided, however, that if the Mortgage Loan is in default, no such redemption is to occur until full FHA mortgage insurance proceeds have been received by the Trustee. Pursuant to special mandatory redemption provisions above, the Trustee is then required to redeem Bonds in an amount equal, as nearly as practicable, to the amount of the funds transferred to the Bond Fund.

**Partial Redemption; Selection of Bonds.** In the event of a redemption of less than all the outstanding Bonds of a particular maturity, the particular Bonds to be redeemed within a maturity are to be selected by the Trustee by lot.

In the event of a redemption of less than all the outstanding Bonds, the Trustee is to redeem the Bonds in direct order of maturity. Accordingly, Series 1993B Bonds are to be redeemed prior to the redemption of any Series 1993A Bonds.

Bonds are to be redeemed only in a principal amount or maturity amount of \$5,000 or an integral multiple thereof.

Upon surrender of any Bond redeemed in part only, the Issuer is to execute and the Trustee is to authenticate and deliver to the holder thereof, without expense to such holder a new Bond or Bonds of the same maturity and series and in authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bonds surrendered.

**Notice of Redemption.** Notice of redemption is to be given by the Trustee (i) to DTC or its nominee or (ii) if DTC or its nominee is no longer the Owner of the Bonds, to the then-registered Owners by mail, not less than 30 days nor more than 45 days before the redemption date to each Owner of Bonds to be redeemed at the last address shown on the registration books kept by the Trustee, as Bond Registrar.

If money is on deposit in the Redemption Fund held under the Indenture to pay the redemption price of the Bonds called for redemption on a redemption date, Bonds thus called and provided for will not bear interest after such redemption date and will not be considered to be outstanding or to have any other rights under the Indenture other than the right to receive payment. No payment of principal will be made by the Trustee on any Bonds or portions thereof called for redemption until such Bonds or portions thereof have been delivered for payment or cancellation or the Trustee has received the items required by the Indenture with respect to any mutilated, lost, stolen or destroyed Bonds.

Notice of such redemption also is to be sent by certified mail, return receipt requested, overnight delivery service or other secure means, postage prepaid, to any holder of \$1,000,000 or more in aggregate principal amount of Bonds to be redeemed, and to certain municipal registered securities depositories (described in the Indenture) that are known to the Trustee to be holding Bonds and to at least two of the national information services (described in the Indenture) that disseminate securities redemption notices; provided that neither failure to receive such notice nor any defect in any notice so mailed will affect the sufficiency of the proceedings for the redemption of such Bonds.

### **BOOK-ENTRY ONLY SYSTEM**

The Bonds will be available in book-entry form only, in the principal amount of \$5,000 or any multiple thereof. Purchasers of the Bonds will not receive certificates representing their interests in the Bonds purchased.

DTC and Its Participants. The Bonds will be held by The Depository Trust Company, New York, New York ("DTC"), as securities depository. The ownership of one fully registered Bond for each maturity is registered in the name of Cede & Co., as nominee for DTC. DTC is a limited-purpose trust company organized under New York banking law, a "banking organization" within the meaning of New York banking law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC was created to hold securities of its participants (the "DTC Participants") and to facilitate the clearance and settlement of securities transactions among DTC Participants in such securities through electronic book-entry changes in accounts of the DTC Participants, thereby eliminating the need for physical movement of securities certificates. DTC Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations, some of whom (and/or their representatives) own DTC. Access to the DTC system is also available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a DTC Participant, either directly or indirectly.

Purchase of Ownership Interests; Notices. Ownership interests in the Bonds may be purchased by or through DTC Participants. Such DTC Participants and the persons for whom they acquire interests in the Bonds as nominees will not receive certificated Bonds, but each DTC Participant is to receive a credit balance in the records of DTC in the amount of such DTC Participant's interest in the Bonds, which is to be confirmed in accordance with DTC's standard procedures. Each such person for whom a DTC Participant acquires an interest in the Bonds, as nominee, may desire to make arrangements with such DTC Participant to receive a credit balance in the records of such DTC Participant, and may desire to make arrangements with such DTC Participant to have all notices of redemption or other communications to DTC, which may affect such persons, be forwarded in writing by such DTC Participant and to have notification made of all interest payments. Neither the Issuer nor the Trustee will have any responsibility or obligation to such DTC Participants or the persons for whom they act as nominees with respect to the Bonds in respect of the accuracy of any records maintained by DTC or any DTC Participant; the payment by DTC or any DTC Participant of any amount in respect of the principal or redemption price of or interest on the Bonds; any notice that is permitted or required to be given to Bondholders under the Indenture; the selection by DTC or any DTC Participant of any person to receive payment in the event of a partial redemption of the Bonds; or any consent given or other action taken by DTC as Bondholder. In this Official Statement, the term "Beneficial Owner" includes the person for whom the DTC Participant acquires an interest in the Bonds.

**SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF THE BONDS, AS NOMINEE OF DTC, REFERENCE HEREIN TO THE BONDHOLDERS OR REGISTERED OWNER OF THE BONDS MEANS CEDE & CO., NOT THE BENEFICIAL OWNER OF THE BONDS.**

DTC is to receive payments from the Trustee to be remitted to the DTC Participants for subsequent disbursement to the Beneficial Owner. The ownership interest of each Beneficial Owner in the Bonds is to be recorded on the records of the DTC Participants, whose ownership interests are to be recorded on a computerized book-entry system operated by DTC.

When reference is made to any action that is required or permitted to be taken by the Beneficial Owner, such reference only relates to those permitted to act (by statute, regulation or otherwise) on behalf of such Beneficial Owner for such purposes. When notices are given, they are to be sent by the Trustee to DTC only. DTC is responsible for notifying Participants, and Participants and Indirect Participants are responsible for notifying the Beneficial Owner. Neither the Trustee nor the Issuer is responsible for sending notices to Beneficial Owner.

Transfer and Exchange of Ownership Interests. Beneficial Owners are to receive a written confirmation of their purchase detailing the terms of the Bonds acquired. Transfers of ownership interests in the Bonds are to be accomplished by book entries made by DTC and by the DTC Participants who act on behalf of the Beneficial Owner. Beneficial Owner will not receive certificates representing their

ownership interest in the Bonds, except as specifically provided in the Indenture. Interest and principal are to be paid by the Trustee to DTC, then paid by DTC to the DTC Participants and thereafter paid by the DTC Participants to the Beneficial Owner when due.

For every transfer and exchange of the Bonds, the Beneficial Owner may be charged a sum sufficient to cover any tax, fee or other government charge that may be imposed in relation thereto.

Discontinuance of DTC Services. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the Issuer and the Trustee and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is not a successor securities depository) certificated Bonds are required to be delivered as described in the Indenture.

The Issuer may determine that continuation of the system of book-entry transfers through DTC (or a successor securities depository) is not in the best interest of the Beneficial Owner. In such event, certificated Bonds are required to be delivered as described in the Indenture.

In the event that the Book-Entry Only System is discontinued, the Trustee is required to send a notice to Bondholders by first-class mail stating that the following provisions will be applicable to the Bonds: Bonds may be exchanged for an equal aggregate principal amount of corresponding Bonds in other authorized denominations and of the same maturity ("Replacement Bonds"), upon surrender thereof at the principal corporate trust office of the Trustee. The transfer of any Bond may be registered on the books maintained by the Trustee for such purpose only upon the surrender thereof to the Trustee with a duly executed assignment in form satisfactory to the Trustee. For every exchange or transfer of registration of Bonds, the Issuer and the Trustee may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer, but no other charge may be made to the Beneficial Owner for any exchange or registration of transfer of the Bonds. The Trustee will not be required to transfer or exchange any Bond after mailing of notice of redemption of such Bond has been made.

### SOURCES AND USES OF FUNDS\*

The proceeds of the Bonds and other funds available on the date of delivery of the Bonds (other than accrued interest which will be deposited in the Bond Fund) and the uses thereof are anticipated to be approximately as follows:

#### Sources

Principal Amount of Series 1993A Bonds  
Principal Amount of Series 1993B Bonds  
Amounts transferred from Indenture  
securing 1983 Bonds  
TOTAL

\$ \_\_\_\_\_

#### Uses

Deposit to escrow to defease  
1983 Bonds<sup>1</sup>  
Costs of Issuance  
TOTAL

\$ \_\_\_\_\_

<sup>1</sup> Upon the defeasance of the 1983 Bonds, the Trustee is to deposit amounts received from the Developer as follows: \$ \_\_\_\_\_ to the Debt Service Reserve Fund and \$ \_\_\_\_\_ to the Costs of Issuance Fund.

\*Preliminary; subject to change.

## **SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**

### **Pledge Under the Indenture**

Under the terms of the Indenture, the Bonds are secured by a pledge of and first lien on all of the Issuer's right, title and interest in, to and under:

- (i) the Net Revenues (as defined herein), the Loan Agreement, the Mortgage Loan and the Mortgage Note, the Mortgage and all other security therefor or certificates or instruments evidencing the same, and all amendments, modifications and renewals thereof, and any interest earnings thereon;
- (ii) any money held under the Indenture by the Trustee, except for money and investment securities held by the Trustee (i) for the redemption of Bonds for which notice of redemption has been duly given, (ii) for the payment of the principal of, premium, if any, and interest on the Bonds that have become due and payable but not yet presented to the Trustee for such payment or (iii) in the Rebate Fund; and
- (iii) except for the Rebate Fund, all funds, money and securities and any and all other rights and interests in property under the Indenture from time to time conveyed, mortgaged, pledged, assigned or transferred as and for additional security for the Bonds by the Issuer.

### **The Mortgage Note and Mortgage**

The Issuer has pledged the Mortgage Note and the Mortgage to the Trustee as security for the Bonds. The Mortgage Note and the Mortgage are non-recourse obligations of the Developer. See "THE MORTGAGE NOTE AND MORTGAGE" herein. Payment of the principal of and interest on the Mortgage Note has been insured by FHA to the extent described herein. See "FHA INSURANCE" herein.

### **Limited Obligations**

The Bonds are limited obligations of the Issuer. Neither the Issuer nor any persons executing the Bonds nor any other member, officer, official, employee, or agent of the Issuer shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds shall not be a debt of the State of Indiana or any political subdivision thereof (other than as a limited obligation of the Issuer), and neither the State of Indiana or any political subdivision thereof (other than as a limited obligation of the Issuer) shall be liable thereon, nor in any event shall the Bonds be payable out of any funds or properties other than those of the Issuer specifically pledged thereto. The Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. The Bonds are not a debt of the United States of America, the United States Department of Housing and Urban Development or any other federal governmental agency or the Federal Housing Administration and are not guaranteed by the full faith and credit of the United States.

## **THE DEVELOPER**

The Developer of the Project is Health Quest Realty X, an Indiana limited partnership. The principal office of the Developer is located at 315 West Jefferson, South Bend, Indiana 46601. The Developer was formed as an Indiana general partnership in 1983 to acquire, construct, and lease the Project. The general partners were Lawrence H. Garatoni, owning a 95% interest, and William L. Centers, owning a 5% interest. On March 27, 1987, the partnership agreement was amended and became a limited partnership, with Judith A. Garatoni becoming the sole limited partner. On March 28, 1987, the partnership agreement was again amended, with Mr. Centers withdrawing from the partnership. After

the second amendment, and through the date hereof, the sole partners have been Mr. Garatoni, holding a 90% interest, and Mrs. Garatoni, holding a 10% interest.

### **THE PROJECT**

The Project is situated on an 11.71 acre tract of land located at 2785 Maplecrest Road, Fort Wayne, Indiana. The Project, which was constructed by Health Quest Development Corporation, contains 77 skilled care beds and 88 intermediate care beds.

The Project contains 56,003 square feet. The building is a wood frame building with a brick and cedar exterior. The building was designed in compliance with state and local building and health ordinances. Construction commenced during October of 1983 and was completed during September of 1984.

### **THE TRUSTEE**

The Society National Bank, Indiana, of South Bend, Indiana, will serve as Trustee under the Indenture. The Trustee is a national banking association organized under the laws of the United States of America. The Trustee will serve as FHA mortgagee of record and as trustee for the Bonds. The Trustee currently serves as trustee or escrowee for 9 other tax-exempt financings backed by FHA-insured multifamily mortgage loans totalling approximately \$42 million in aggregate principal amount. The Trustee currently serves as trustee for approximately 185 taxable and tax-exempt financings in excess of \$1.5 billion in aggregate principal amount.

As an organization, Society National Bank, Indiana, is part of Society Corporation with corporate trust offices in Texas, Indiana, Ohio, Michigan and New York. Affiliates of the Trustee serve as trustee/escrow agent on approximately 1,700 bond issues totalling in excess of \$23 billion in aggregate principal amount.

### **FHA INSURANCE**

The Federal Housing Administration has insured the Mortgage Note pursuant to Section 232 of the National Housing Act. Applicable FHA regulations are contained in 24 C.F.R. 232 which, with certain exceptions incorporate by reference the provisions of 24 C.F.R. 207 (covering mortgages insured under Section 207 of the National Housing Act). The following summary is qualified in its entirety by reference to the mentioned sections of the National Housing Act and applicable regulations promulgated thereunder.

The National Housing Act defines an event of default under an FHA-insured mortgage as failure (i) to make any payment due under the mortgage or (ii) to perform any other mortgage covenant if the mortgagee, because of such failure, has accelerated the debt. In the event of a default continuing for a period of 30 days, the Trustee must, in order to preserve its right to full mortgage insurance benefits, give notice to the Federal Housing Commissioner of the default and of its intention to file an insurance claim. Promptly thereafter, the Trustee may take the necessary steps to file a claim for insurance within the periods specified within the regulations. The Indenture requires the Trustee to assign a defaulted mortgage loan to the Commissioner.

In the event of a default on the Mortgage Note, its assignment to FHA and the filing of a claim for FHA insurance, FHA will pay FHA mortgage insurance benefits in cash or FHA Debentures, in an amount equal to the sum of (a) 99% of the unpaid principal amount of the Mortgage Note computed as of the date of default, (b) certain eligible payments (such as taxes, insurance, special assessments and water rates) made by the Trustee and (c) interest on the insurance proceeds from the date of default to

the date on which such benefits are paid at the applicable FHA debenture rate (which interest may be limited if certain notices are not given to FHA or certain steps not taken within the prescribed time periods), less certain amounts which may be realized by the Trustee on the mortgaged property or held by the Trustee for the Developer's account.

The full amount of Mortgage Insurance benefits is not paid until after submission to FHA of the requisite fiscal data to support the claim. The timing of payment is not governed by specific regulations. Current FHA practice, generally, for claims arising after final endorsement, where benefits are requested in cash, is to pay 90% of the claim within three business days of the recordation of the assignment of the Mortgage to FHA and the balance, after FHA audit, within three to nine months. FHA has, however, announced a policy of giving priority to processing of mortgage insurance claims where the mortgages secure tax-exempt bonds.

Funds in the Debt Service Reserve Fund are expected to be sufficient to pay interest on the Bonds for a 12-month period. There is no assurance, however, that such funds will be sufficient to avoid a default on the Bonds if there is a delay in assignment of the defaulted Mortgage Loan to FHA, which could be caused by the bankruptcy of the Developer, or an unusual delay in FHA claim processing due to workload or other factors.

FHA requires the maintenance of casualty insurance on the Project. Failure to maintain such insurance in the required amount may result in partial or total loss of mortgage insurance benefits, in which case a casualty loss could cause a Bond default.

## THE MORTGAGE NOTE AND MORTGAGE

*The following is a brief summary of the Mortgage Note and Mortgage. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Mortgage Note and Mortgage, copies of which are on file with the Trustee.*

The Mortgage Note is a nonrecourse obligation of the Developer (which means that the Developer is not liable for the payment thereof beyond the amount realized upon the security therefor) providing for level monthly payments of principal and interest. In the event of a failure to make a payment when due and the failure to correct such failure by the next due date, the entire amount of the Mortgage Note may be declared due and payable by the Trustee. In the event of a late payment of more than 15 days, the Trustee may charge and collect from the Developer a penalty of up to two percent of the late payment. The Mortgage Note is prepayable only in accordance with the provisions thereof including the payment of premiums.

The Mortgage conveys the Developer's interest in the Project to secure the payment of the Mortgage Note. The Mortgage (including the FHA Regulatory Agreement incorporated therein) requires that:

- (1) fire and casualty insurance be maintained on the Project payable to the Trustee in an amount not less than necessary to comply with the applicable co-insurance percentage but in no event less than 80% of the insurable value or the unpaid balance of the Mortgage Note;
- (2) the mortgage insurance premiums, taxes and utility assessments, fire and casualty insurance premiums, and deposit to the repair and replacement fund established under the Servicing Agreement be paid monthly to the Mortgage Servicer together with the monthly payment on the Mortgage Note;
- (3) the Developer not place any liens on the Project inferior (without FHA consent) or superior to the Mortgage; and

- (4) the Developer maintain the Project in good repair and condition.

## **THE LOAN AGREEMENT**

*The following is a summary of certain provisions of the Loan Agreement. Such summary does not purport to be comprehensive or definitive, and reference is made to such document for a full and complete statement of its terms, a copy of which may be obtained from the Placement Agent during the period that the Bonds are offered and, thereafter, upon request to the Trustee.*

### **The Loan; Refunding**

The Loan Agreement states that, upon the terms and conditions specified therein and in the Indenture, the Issuer is to cause the proceeds of the Bonds to be applied in such manner as to cause the 1983 Bonds to be refunded in full, and to cause the Mortgage Note and the related loan documents (the "Loan Documents") to be delivered and pledged and assigned to the Trustee under the Indenture, in order to secure the full and timely payment of all principal of, premium, if any, and interest on the Bonds when due.

### **Tax Covenants**

The Issuer and the Developer covenant to each other and to the holders of the Bonds that they will neither take any action, nor execute any agreement or other instrument, nor to their knowledge suffer the same to be done, which would adversely affect the validity, enforceability or the exclusion from gross income for federal income tax purposes of the interest on the Series 1993A Bonds. The Developer covenants that during the period commencing with the date of delivery of the 1983 Bonds and ending three years thereafter, it did not enter into any contract or agreement with any person for the performance of management services for the Project, other than as described in the Loan Agreement, and did not amend any such contract or agreement with respect to the term thereof or the compensation to be paid thereunder, or in any way change the ownership of the Project.

In addition, the Issuer and the Developer each covenant to the owners of the Bonds that they will neither make nor instruct the Trustee to make, any investment or other use of the proceeds of the Bonds that would cause the Series 1993A Bonds to become arbitrage bonds under the meaning of Section 148 of the Internal Revenue Code of 1986, as amended.

### **Maintenance and Operation of Project; Developer's Existence**

The Developer agrees to cause the Project to be maintained and operated as a skilled nursing home facility in accordance with applicable regulations and standards of the Indiana State Board of Health.

The Developer agrees to maintain its partnership existence, and not to dispose of all or substantially all of its assets or enter into any consolidation or merger unless the transferee, successor or surviving entity is a partnership or corporation organized under the laws of a state within the United States, is qualified to do business in Indiana, and assumes in writing all obligations of the Developer under the Mortgage Note, the Mortgage, and the Loan Agreement.

### **Events of Default and Remedies**

Failure by the Developer to observe and perform any covenant, agreement or obligation contained in the Loan Agreement for a period of 30 days after written notice, specifying such failure and requesting the same to be remedied, has been given to the Developer by the Mortgage Servicer or the Trustee, will constitute an "Event of Default" under the Loan Agreement; provided that if the Mortgage Servicer and the Trustee agree that such failure is of such nature that it can be corrected within a reasonable time, but

not within 30 days, and if the Developer promptly institutes corrective action and is diligently pursuing the same, an Event of Default will be the failure by the Developer to observe and perform such covenant, agreement or obligation within a reasonable time.

The Developer covenants to notify the Issuer, the Trustee and the Mortgage Servicer immediately upon receipt of notice of any default under the Mortgage, the Mortgage Note, or the Loan Agreement.

Upon the occurrence of an Event of Default, in addition to any other rights which the Issuer, the Trustee or the Mortgage Servicer may have, the Issuer, the Trustee or the Mortgage Servicer may withhold further performance under the Loan Agreement and may also take whatever action at law or in equity may appear necessary or desirable to enforce the performance and observation by the Developer of any of its obligations, agreements or covenants under the Loan Agreement and to collect any payments due or to obtain other remedies; provided, however, that prior to commencing any action, suit or proceeding under the Loan Agreement against the Developer, the Issuer or the Trustee, as the case may be, have received the prior written consent of FHA, if required by FHA.

#### **Damage, Destruction and Condemnation**

If, while any Bonds remain outstanding under the Indenture, the Project is damaged or destroyed by fire or other casualty, or the Project or any part thereof is taken by condemnation, the Developer either is to restore the Project as required by the Indenture and Loan Agreement or is to prepay the Mortgage Loan as a whole.

#### **Amendments, Changes and Modification**

The Loan Agreement may not be amended except by an agreement in writing signed in writing by the Developer and the Issuer and consented to by the Trustee in accordance with the Indenture. See "THE INDENTURE — Amendment of Certain Documents" herein.

#### **Non-Recourse Obligation**

The Loan and the Mortgage Note are non-recourse obligations of the Developer, and as a result, the Loan Agreement is not intended to create any personal liability for the "debt" created on account of the issuance of the Bonds and the obligation of the Developer under the Loan Agreement and accordingly the remedies available to the Issuer and the Trustee upon an Event of Default insofar as they relate to the payment of any amounts due under the Loan Agreement are limited to the rights and remedies against the mortgaged property, the rents, issues and profits from the mortgaged property and such other security to secure the repayment of the Loan as is given the Issuer or Trustee under the Indenture, the Loan Agreement and the Mortgage.

### **THE INDENTURE**

*The following is a brief summary of the Indenture. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Indenture, copies of which are on file with the Issuer and the Trustee.*



## **Establishment of Funds**

The following funds and accounts are established by the Trustee under the Indenture:

Bond Fund  
Debt Service Reserve Fund  
Expense Fund  
Redemption Fund  
Rebate Fund  
Costs of Issuance Fund

On the date the Bonds are issued, the Trustee is required to deposit Bond proceeds and other amounts into the funds and accounts under the Indenture as described under "SOURCES AND USES OF FUNDS" herein.

## **Application of Net Revenues; Bond Fund**

The Trustee is to deposit into the Bond Fund all earnings and gains from the investment of money held in under the Indenture (other than on amounts in the Rebate Fund).

The Trustee is to transfer the proceeds from any prepayment of the Mortgage Loan to the Redemption Fund to be used for the redemption of Bonds selected in accordance with the redemption provisions described above under the caption "THE BONDS — Redemption" herein.

On receipt, all other Net Revenues are to be applied to the following order of priority:

- (1) to the Bond Fund to pay the principal of and interest on the Bonds accruing on or before the next February 1 or August 1 as applicable;
- (2) to transfer to the Expense Fund the amount, if any, needed to pay Qualified Expenses;
- (3) so long as the Trustee has not received FHA Debentures in respect of an FHA mortgage insurance claim relating to the Mortgage Loan, to the Debt Service Reserve Fund, an amount necessary to cause the amount on deposit therein to equal the Debt Service Reserve Fund Requirement; and
- (4) commencing February 1, 1994, to the Redemption Fund, any remaining balance to be used for the Special Mandatory redemption of Bonds. See "THE BONDS — Redemption — Special Mandatory Redemption" herein.

"Debt Service Reserve Fund Requirement" means, as of any date of calculation, an amount equal to the sum of 12 months' interest on the original principal amount of the Bonds, plus one month's interest on the unpaid principal balance of the Mortgage Note (initially, \$\_\_\_\_\_).

"Net Revenues" means all income, revenues, proceeds and other amounts received by the Issuer or the Trustee on or in connection with the Mortgage Loan (including any prepayments thereof) and any and all interest, profits or other income derived from the investment of amounts in any funds or accounts (but not the Rebate Fund) established pursuant to this Indenture, but does not include (i) amounts retained by the Mortgage Servicer as a servicing fee, (ii) certain payments received by the Trustee which are to be applied by the Trustee as mortgagee under the Mortgage, or (iii) any funds held by the Trustee (as mortgagee under the Mortgage) on behalf of the Developer pursuant to the Mortgage or the Regulatory Agreement.

## **Expense Fund**

The Trustee is to use amounts on deposit in the Expense Fund solely to pay Qualified Expenses, which includes the annual accrued fees and expenses of the Trustee, in an amount not to exceed .125% per annum of the Bonds outstanding, payable semi-annually in advance on each February 1 and August 1 commencing August 1, 1993.

## **Debt Service Reserve Fund**

On the Closing Date the amount of \$\_\_\_\_\_ is to be deposited into the Debt Service Reserve Fund. The Trustee is to use amounts in the Debt Service Reserve Fund to pay the principal of and interest on the Bonds only after written notice of default on the Mortgage Loan has been given to HUD.

In connection with any proposed partial redemption of Bonds, the Trustee is to compute the reduction in the Debt Service Reserve Fund Requirement that will result from such redemption and transfer any amount on deposit in the Debt Service Reserve Fund which will exceed the Debt Service Reserve Fund Requirement following such redemption to the Redemption Fund to be used in connection with such redemption; provided, however, that if the Mortgage Loan is in default, such redemption is not to occur until full FHA Mortgage insurance proceeds have been received.

The Trustee is to deposit all investment earnings received from the investment of amounts in the Debt Service Reserve Fund in the Bond Fund.

The money in the Debt Service Reserve Fund is also to be used to pay the final principal payment due on the Bonds.

## **Redemption Fund**

Amounts deposit into the Redemption Fund are to be withdrawn to redeem Bonds in accordance with the Indenture. See "THE BONDS — Redemption" herein.

Whenever amounts held in the Bond Fund, the Debt Service Revenue Fund, the Expense Fund and the Redemption Fund are sufficient to redeem all outstanding Bonds on the next date for which notice of redemption may be given and to pay all Qualified Expenses, all such amounts, net of Qualified Expenses, are to be transferred to the Redemption Fund.

## **Rebate Fund**

The Rebate Fund is to be administered by the Trustee in accordance with the provisions of the Indenture. There are to be deposited in the Rebate Fund such amounts as are required to be deposited therein in accordance with the Indenture. Money deposited in the Rebate Fund is to be held by the Trustee in trust for payment to the federal government of the United States of America, and neither the Issuer nor the Developer nor the holder of any Bonds have any rights in or claim to such money.

The Trustee is to remit amounts in the Rebate Fund to the United States, as directed in accordance with the Indenture.

## **Investment of Funds**

Money held in the Bond Fund, the Redemption Fund, and the Expense Fund and up to \$\_\_\_\_\_ of the amount held in the Debt Service Reserve Fund is to be invested by the Trustee pursuant to an Investment Agreement (the "Investment Agreement") with [\_\_\_\_\_] providing for rates of return of \_\_\_\_\_% per annum on amounts in the Debt Service Reserve Fund (up to \$\_\_\_\_\_) so invested and \_\_\_\_\_% per annum on the Bond Fund, the Redemption Fund, and the Expense Fund.

Failure to receive such rates of return or a return of principal so invested could affect the ability to pay the principal of and interest on the Bonds.

Money held in the funds established under the Indenture is to be invested in the Investment Agreement (as described and defined above) to the maximum extent permitted or, as directed by the Developer, in Investment Securities (as defined below) paying interest and maturing (or having a right to tender on seven days' notice) not later than the dates on which it is estimated that such money will be required by the Trustee. Any money in the funds established under the Indenture which is not the subject of the Investment Agreement is to be invested in Investment Securities maturing (or having a right to tender on seven days' notice) on a date which is the earlier of 90 days from the date such investment is made and the date such funds are needed.

All interest and other profit derived from such investments (other than with respect to money on deposit in the Rebate Fund, in which case earnings and profits are to be retained within the Rebate Fund) are to be deposited when received in the Bond Fund.

Money held in the Debt Service Reserve Fund in excess of \$ \_\_\_\_\_ is to be invested in Investment Securities as described in clause (7) below.

"Investment Securities" means any of the following that at the time are lawful investments under the laws of the State for the money held under the Indenture: (1) direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof when such obligations are backed by the full faith and credit of the United States, which obligations include the following: (i) United States Treasury obligations which are direct or fully guaranteed obligations; (ii) obligations, debentures, notes or other evidences of indebtedness issued or guaranteed by the Government National Mortgage Association; (iii) Federal Housing Administration debentures; (iv) Federal Home Loan Mortgage Corporation participation certificates and senior debt obligations fully guaranteed as to timely payment of principal and interest; (v) Federal National Mortgage Association's mortgage-backed securities and senior debt obligations (excluded are stripped principal-only mortgage securities which are valued greater than par on the portion of unpaid principal and stripped interest-only mortgage securities); (vi) non-callable obligations of the Resolution Funding Corporation representing an undivided interest in payments of interest from Resolution Funding Corporation obligations; (2) certificates of deposit, time deposits, bankers acceptances (having maturities of not more than 365 days) and repurchase agreements collateralized by obligations described in clause (1) hereof of any bank the unsecured debt obligations of which (or, in the case of the principal bank in a bank holding company, senior unsecured debt obligations of the bank holding company) have been rated by Moody's Investor Services, Inc. ("Moody's") at least "AA3/P-1"; (3) deposits which are fully insured by the Federal Deposit Insurance Corporation or its successor; (4) investment agreements, having similar rates and terms as the Investment Agreement and acceptable to the agency rating the Bonds, with institutions whose unsecured debt or claims paying ability, as the case may be, is and continues to be at all times rated by Moody's or, if Moody's no longer maintains a rating on the Bonds, any other nationally recognized bond rating agency then maintaining a rating on the Bonds at least equal to the rating on the Bonds; (5) units of a taxable money market portfolio rated in the highest category by Moody's; (6) the Investment Agreement; and (7) obligations the interest on which is excluded from gross income pursuant to Section 103 of the Code (including investment in regulated investment companies that invest exclusively in such obligations), provided that such obligations are not specified private activity bonds within the meaning of Section 57(a)(5)(C) of the code and have a Moody's rating of at least "Aa" or P-."

#### **Final Balances**

Upon final payment of all principal of, premium, if any, and interest on the Bonds, and upon satisfaction of all claims against the Issuer and the Trustee under the Indenture, including the payment of all fees, charges and expenses of the Trustee, the Issuer and the Rebate Consultant that are properly due and payable under the Indenture, and any other fees and charges that are properly payable under the Indenture or upon the making of adequate provision for the payment of such amounts, as permitted by

the Indenture, all money remaining in all funds (other than the Rebate Fund) is to be paid to Bank One, Akron, NA, or the Developer.

#### **Events of Default; Acceleration and Other Remedies**

Each of the following is an "event of default" under the Indenture:

- (a) default in the due and punctual payment of any interest on any Bond;
- (b) default in the due and punctual payment of the principal of or premium, if any, on any Bond whether at the stated maturity thereof, or on proceedings for redemption thereof, or on the maturity thereof by declaration;
- (c) if the Issuer files a petition under Chapter IX of the Bankruptcy Code.
- (d) default, and the continuation thereof for a period of 30 days following notice to the Trustee, in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer in the Indenture or in the Bonds after written notice to the Issuer from the Trustee or the registered owners of at least 25% of the Bond Obligation (as defined below) at such time specifying such default and requiring the same to be remedied; or

Upon the occurrence of an event of default as provided in paragraphs (a) and (b) above, the Trustee may, and upon the written request of the holders of not less than 25% of the aggregate principal amount of the Bonds then outstanding must, by notice in writing delivered to the Issuer, declare the principal of all Bonds then Outstanding (the "Bond Obligation") and the interest accrued thereon immediately due and payable, and such principal and interest will thereupon become and be immediately due and payable. There may be no acceleration of Bonds upon an event of default described in paragraph (c) or (d) above.

If at any time after the Bonds have been so declared due and payable, and before any judgment or decree for the payment of the money due has been obtained or entered, the Issuer or the Developer pays to or deposits with the Trustee a sum sufficient to pay all principal of the Bonds then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) upon all the Bonds then due, with interest at the rate borne by the Bonds on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable expenses of the Trustee have been made good or cured or adequate provisions will have been made therefor, and all other defaults under the Indenture have been made good or cured or waived in writing by owners of 100% of the Bond Obligation, then and in every case, the Trustee on behalf of the holders of all the Bonds is to rescind and annul such declaration and its consequences.

Upon the happening and continuance of an event of default, the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the holders of all Bonds, may also proceed to protect and enforce any rights of the Trustee and, to the full extent that the holders of such Bonds themselves might do, the rights of such Bondholders under the laws of the State of Indiana or under the Indenture by such of the following remedies as the Trustee deems most effectual to protect and enforce such rights:

- (1) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, premium, if any, or interest on the Bonds then outstanding, or for the specific performance of any covenant or agreement contained in the Indenture or in the Loan Agreement, the Mortgage Note or the Mortgage, or to require the Issuer to carry out any other covenant or agreement with Bondholders and to perform its duties under the Act;
- (2) by pursuing any available remedies under the Loan Agreement, the Mortgage Note or the Mortgage;

(3) in connection with an event of default described in paragraphs (a) or (b) above, by realizing or causing to be realized through sale or otherwise upon the security pledged under the Indenture; and

(4) by action or suit in equity, to enjoin any acts or things that may be unlawful or in violation of the rights of the holders of Bonds.

If any event of default has occurred and if requested in writing to do so by the holders of not less than 25% of the Bond Obligation with respect to which there is a default, and if indemnified as provided in the Indenture, the Trustee is obliged to exercise one or more of the rights and powers conferred by the Indenture as the Trustee, being advised by counsel, deems most expedient in the interest of the Bondholders. Subject to the provisions of the Indenture, the holders of a majority of the Bond Obligation have the right at any time, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Indenture, or for the appointment of a receiver or any other proceedings under the Indenture, in accordance with the provisions of law and of the Indenture.

### **Remedies of Bondholders**

No holder of any Bond has any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Indenture or for the execution of any trust under the Indenture or for the appointment of a receiver or any other remedy under the Indenture, unless (a) a default occurred of which the Trustee has been notified as provided in the Indenture; (b) such default has become an event of default; (c) the holders of at least 25% of the Bond Obligation have made written request to the Trustee and have offered reasonable opportunity to the Trustee either to proceed to exercise the powers granted in the Indenture or to institute such action, suit or proceeding in its own name; (d) such holders have offered to the Trustee indemnity as provided in the Indenture; and (e) the Trustee within 60 days thereafter fails or refuses to exercise the powers granted in the Indenture, or to institute such action, suit or proceeding; no holders of the Bonds, however, will have any right to affect, disturb or prejudice the lien of the Indenture or the rights of any other holders of Bonds or to obtain priority or preference over any other holders or to enforce any right under the Indenture, except in the manner provided in the Indenture and for the equal and ratable benefit of all owners of Bonds with respect to which there is a default. Nothing contained in the Indenture, however, affects or impairs the right of any Bondholder to enforce the payment of the principal of, the premium, if any, and interest on any Bond at the maturity thereof or the obligation of the Issuer to pay the principal of, premium, if any, and interest on the Bonds issued under the Indenture to the holders thereof, at the time, in the place, from the sources and in the manner set forth in the Bonds.

### **Defeasance**

When the principal of, premium, if any, and interest on, all Bonds have been paid, or provision has been made for payment of the same, together with all other sums payable under the Indenture by the Issuer, the right, title and interest of the Trustee thereupon is to cease and the Trustee, on demand of the Issuer, is to release the lien of the Indenture, and at the written direction of the Developer, either (i) cancel the Mortgage Note, endorse the Mortgage for cancellation, and execute such documents to evidence such release as may be reasonably required by the Issuer and the Developer and is to turn over to the Developer (or any such person, body or authority as may be entitled to receive the same) all balances remaining in any funds under the Indenture; or (ii) endorse, transfer, assign and convey the Mortgage Note to the party directed by the Developer; provided, however, that in the event of a default under the Mortgage and payment of a claim under the mortgage insurance in FHA Debentures, if any principal remains outstanding on such FHA Debentures when the principal of, and interest on all Bonds has been paid, or provision therefor has been made, as provided below, the Trustee is to return such FHA Debentures to FHA for cancellation, unless the Issuer and the Trustee have received an opinion of nationally recognized bond counsel satisfactory to both that retention of such FHA Debentures will not adversely affect the exemption of interest on the Series 1993A Bonds from federal income tax.

Proper provision for the payment of the principal of and interest on the Bonds may be made by delivery to the Trustee of (a) cash, (b) non-callable direct obligations of the United States of America, or non-callable obligations fully guaranteed as to principal and interest by the United States of America, maturing on or before the dates when payments in respect of the Bonds become due, and the principal amount of which and the interest thereon which when due will be in an aggregate amount sufficient without reinvestment to make all payments on the Bonds when due, (c) non-callable obligations of the Resolution Funding Corporation representing an undivided interest in payments of interest from Resolution Funding Corporation obligations, or (d) any combination of cash and such obligations. The lien of the Indenture is not to be discharged until the Trustee has received an opinion of bankruptcy counsel, acceptable to the Trustee, to the effect that payment of such money to the Bondholders will not constitute a voidable preference under Section 547 or be recoverable under Sections 362 or 550(a) of the United States Bankruptcy Code in the event of the bankruptcy of the Developer.

Upon an even of default under the Collateral Deposit Agreement between Bank One, Akron, NA (the "Bank"), and the Developer, the Depositor may, at its option, instruct the Issuer to instruct the Trustee to (i) purchase the entire principal amount of the outstanding Series 1993 A Bonds from the Bank, and (ii) establish a defeasance escrow with the Trustee with amounts provided by the Bank, in an amount sufficient to defease the Series 1993B Bonds to the earliest date on which such Series 1993B Bonds are subject to optional redemption, and to call the Series 1993B Bonds for redemption on such date.

#### **FHA Mortgage Insurance**

The Trustee is to take all steps necessary to maintain the FHA Insurance with respect to the Mortgage Loan. In the event of a failure by the Developer to make the entire amount of any payment due under the Mortgage Note or to perform any other covenant under the provisions of the Mortgage, the Trustee is immediately to take all steps necessary not to impair the interests of the Bondholders and to obtain the FHA mortgage insurance benefits.

#### **Trustee as FHA-approved Mortgagee; Servicing the Loan; Servicing Agreement**

The Trustee is to be approved by FHA to act as mortgagee for any FHA-insured indebtedness at all times during which the Loan is outstanding.

The Trustee is to engage an FHA-approved mortgage banking company or financial institution not affiliated with the Trustee to service the Loan, as described below. So long as any Bonds remain outstanding, the Mortgage is to be serviced in accordance with acceptable practices of prudent lending institutions and all applicable provisions of the National Housing Act and all applicable rules and regulations thereunder.

The Trustee is directed in the Indenture to accept an assignment from the Prior Trustee of the Servicing Agreement in effect prior to the issuance of the Bonds or to execute another Servicing Agreement in form and substance acceptable to the Issuer. In the event any such Servicing Agreement is terminated, the Trustee is to engage, at the direction of the Issuer, a qualified successor Mortgage Banker to service the Loan in accordance with the provisions of the Indenture; provided, however, that the Trustee may service the Loan itself while such a successor servicer is being selected.

#### **Supplemental Indentures Not Requiring Consent of Bondholders**

The Issuer and the Trustee may, without the consent of or notice to any of the Bondholders, enter into indentures supplemental to the Indenture not inconsistent with the terms and provisions of the Indenture or materially adverse to the interests of the holders of the Bonds for any of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in the Indenture;

- (b) to subject to the lien and pledge of the Indenture additional revenues, properties or collateral;
- (c) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or any of them;
- (d) to modify, amend or supplement the Indenture or any indenture supplemental thereto in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute or under any state securities laws;
- (e) to permit the Trustee to comply with any obligations imposed upon it by law;
- (f) to achieve compliance of the Indenture with any applicable federal securities or tax laws;
- (g) to maintain the exclusion of interest on the Series 1993A Bonds from gross income for federal income tax purposes;
- (h) to improve or maintain the rating on the Bonds; and
- (i) in connection with any other change in the Indenture that, in the judgment of the Trustee, is not to the prejudice of the Trustee or the Bondholders.

#### **Supplemental Indentures Requiring Consent of Bondholders**

The Issuer and the Trustee may, with the consent of the holders of not less than two-thirds of the Bond Obligation, enter into supplemental indentures for the purpose of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in the Indenture; except that the provisions described in this paragraph do not permit, without the consent of the owners of all the Bonds that would be affected thereby (a) an extension of the stated maturity or a reduction in the principal amount or reduction in the rate, or extension of time of payment of interest on, or reduction of any premium payable on the redemption of, any Bonds, without the consent of the holders of all Bonds; (b) the creation of any lien prior to or on a parity with the lien of the Indenture; (c) a reduction in the amount of the Bond Obligation the consent of which is required for the execution of such supplemental indentures, without the consent of the holders of all Bonds at the time outstanding that would be affected by the action to be taken; (d) the modification of the rights, duties or immunities of the Trustee without the consent of the Trustee; (e) a privilege or priority of any Bond over any other Bonds; (f) any action that, in the opinion of nationally-recognized bond counsel, may result in the loss of the exclusion of interest on the Series 1993A Bonds from gross income for federal income tax purposes; or (g) any change in the provisions of the Indenture limiting a disposition of the Mortgage Loan.

#### **Amendment of Certain Documents**

The Issuer and the Trustee may make or consent to any amendment, change or modification of the Loan Documents without approval by HUD. The Trustee is not obligated to enter into any amendment under the Indenture unless it has received an opinion of counsel to the effect that the amendment has been effected in compliance with the provisions of the Indenture.

#### **The Trustee**

During any event of default, the Trustee is to exercise rights and powers vested in it by the Indenture with the degree of care and skill a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs. Otherwise, the Trustee is to perform only such duties as are specifically set forth in the Indenture.

In the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely upon any certificate or opinion furnished it. The Trustee is not liable in the absence of bad faith for any error of judgment, or for any act or omission taken in accordance with the direction of the holders of any applicable proportion of the Bonds.

#### **HUD and FHA Requirements to Control**

In the event of any conflict between the provisions of the Indenture and the provisions of the National Housing Act, any applicable HUD regulations, related HUD administrative requirements, the Mortgage Loan Documents, such National Housing Act, regulations, related administrative requirements or Mortgage Loan Documents will be controlling in all respects.

### **THE FHA REGULATORY AGREEMENT**

*The following is a brief summary of the FHA Regulatory Agreement. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the FHA Regulatory Agreement, copies of which are on file with the Issuer and the Trustee.*

The Developer and HUD have entered into an FHA Form of Regulatory Agreement (the "FHA Regulatory Agreement") with respect to the Project. The FHA Regulatory Agreement provides, among other things, that the Developer is required to maintain the Project in good condition. Dwelling units are not to be rented for a period of less than 30 days.

The FHA Regulatory Agreement also prohibits the conveyance, transfer or encumbrance of the Project or any right to manage the Project without the prior written approval of FHA. The Developer may not make, receive, or retain any distribution of assets or income from the Project except from "surplus cash" and only as permitted under applicable laws.

The Developer is prohibited, without the prior written approval of FHA, from remodeling, adding to or demolishing any part of the Project or engaging in any other business or activity or incurring any obligation or liability not in connection with the Project.

The Project and all books, records, and documents relating thereto are required to be subject to examination and inspection at any reasonable time by FHA. Books and accounts of the Project are to be kept in accordance with FHA requirements and complete annual financial reports are to be furnished to FHA within 60 days of the end of each fiscal year.

In the event of a default in the performance of the Developer's obligations under the FHA Regulatory Agreement, even in the absence of a default under the Note or the Mortgage, FHA may (a) notify the Mortgagee of such default and request the Mortgagee to declare a default under the Note and the Mortgage and the Mortgagee may, at its option, declare the whole indebtedness due and proceed with assignment of the Note and the Mortgage to FHA, (b) collect all rents and charges in connection with the operation of the Project and use such collections to pay the Developer's obligations under the FHA Regulatory Agreement and under the Note and the Mortgage and the expenses of maintaining the Project, (c) take possession of and operate the Project, and (d) apply for an injunction, appointment of a receiver or such other relief as may be appropriate.

### **TAX MATTERS**

**Series 1993A Bonds.** In the opinion of Kutak Rock, Washington, D.C., Bond Counsel, assuming compliance on a continuous basis by all parties with certain requirements of the 1986 Code and of the 1954 Code and the regulations thereunder, interest on the Series 1993A Bonds is excludible from gross



income for federal income tax purposes under existing laws, regulations, rulings and judicial decisions, except to the extent of the following:

(1) The interest on any Series 1993A Bond for any period during which such Series 1993A Bond is held by a "substantial user" of facilities refinanced by the proceeds of the Bonds or a "related person" within the meaning of Section 147 of the 1986 Code.

(2) Because the 1983 Bonds were issued prior to August 8, 1986, interest on the Bonds will not be treated as an item of tax preference in computing the alternative minimum tax for individuals and corporations; however, interest on the Series 1993A Bonds is included in the "adjusted current earnings" (i.e., alternative minimum, taxable income as adjusted for certain items including those items that would be included in the calculation of a corporation's earnings and profits under Subchapter C of the 1986 Code) of certain corporations for taxable years beginning after 1989, and such corporations are required to include in the calculation of alternative minimum taxable income 75% of the excess of such corporation's adjusted current earnings over its alternative minimum taxable income (determined without regard to this adjustment and prior to reduction for certain net operating losses).

In rendering its opinion, Bond Counsel will assume the correctness of the opinion of Bond Counsel for the 1983 Bonds, with respect to the tax exemption of interest on the 1983 Bonds and compliance on a continuous basis from the date of delivery thereof, with certain procedures established in the indenture related to the 1983 Bonds designed to meet the requirements of the 1954 Code as in effect immediately prior to the enactment of the 1986 Code, and the regulations thereunder and with the Issuer's covenants in the Indenture related to the Series 1993A Bonds to take or refrain from taking such actions as are necessary to keep interest on the Bonds excludible from gross income for federal income tax purposes. In addition, Bond Counsel will assume continued compliance with certain procedures which meet the requirements of Section 103 of the 1986 Code to the extent such provisions apply to the Series 1993A Bonds, including the covenants in the Loan Agreement to take or refrain from taking such actions as are necessary to keep interest on the Series 1993A Bonds excludible from the gross income of the Developer thereof for federal income tax purposes.

Although interest on the Series 1993A Bonds is excluded from gross income for federal income tax purposes, the accrual or receipt of interest on the Series 1993A Bonds may otherwise affect the federal income tax liability of the recipient. The extent of these other tax consequences will depend upon the recipient's particular tax status or other items of income or deduction. Bond Counsel expresses no opinion regarding any such consequences. Purchasers of the Series 1993A Bonds, particularly purchasers that are corporations (including S corporations and foreign corporations operating branches in the United States), property or casualty insurance companies, banks, thrifts or other financial institutions and certain recipients of Social Security and railroad retirement benefits, are advised to consult their tax advisors as to the tax consequences of purchasing or holding the Bonds.

In the opinion of Bond Counsel, the interest on the Series 1993A Bonds is exempt from taxation by the State of Indiana for all purposes, except inheritance taxes, and the franchise tax applicable to corporations transacting business of a financial institution in the State of Indiana.

**Series 1993B Bonds.** Interest on the Series 1993B Bonds is subject to federal income taxation.

#### **ABSENCE OF LITIGATION**

It is a condition of the Placement Agent's acceptance of the Bonds, that on the date of delivery of the Bonds, the Issuer deliver a certificate to the effect that no controversy or litigation of any nature involving the Issuer is pending, nor, to its knowledge, is any such controversy or litigation threatened in writing delivered to the Issuer, that would attempt to restrain or enjoin the issuance, sale, execution or delivery of the Bonds, or that would in any way contest or affect the validity of the Bonds, the

proceedings of the Issuer taken with respect to the issuance or sale thereof, the pledge or application of any money or securities provided for the payment of the Bonds and the existence or powers of the Issuer or the title of any officers of the Issuer to their respective positions.

## **LEGAL MATTERS**

Certain legal matters incident to the authorization, issuance, sale and delivery of the Bonds by the Issuer are to be passed upon by Kutak Rock, Washington, D.C., Bond Counsel. Certain legal matters relating to the Issuer are to be passed upon by Helmke Beams Boyer & Wagner, Fort Wayne, Indiana, and Barnes & Thornburgh, South Bend, Indiana, and for the Placement Agent by its counsel, Arter Hadden Haynes & Miller, Washington, D.C. Charles Loeser, Esq., South Bend, Indiana, will serve as counsel to the Developer in connection with the transaction. Payment of the fees and expenses of the foregoing counsel is contingent upon the issuance and delivery of the Bonds.

## **ENFORCEABILITY OF REMEDIES**

The remedies available to the Trustee and the owners of the Bonds upon an event of default under the Indenture, the Mortgage Note or any other document described herein are in many respects dependent upon regulatory and judicial actions which are often subject to discretion and delay. Under existing law and judicial decisions, the remedies provided for under such documents may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Bonds will be qualified to the extent that the enforceability of certain legal rights related to the Bonds is subject to limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally and by equitable remedies and proceedings generally.

## **MARKETING**

Bank One, Columbus, N.A. (the "Placement Agent"), is offering the Bonds on behalf of the Issuer at the prices set forth on the cover hereof. The initial offering prices may be changed from time to time and concessions from the offering prices may be allowed to dealers, banks and others. For its services as such, the Placement Agent is to be paid a fee equal to \$\_\_\_\_\_. From this fee, the Placement Agent will pay certain of its expenses relating to the offering.

## **RATING**

It is a condition precedent to the Placement Agent's acceptance of the Bonds that Moody's assign the Bonds a rating as set forth on the cover page hereof. Moody's may have obtained and considered information and material that have not been included in this Private Placement Memorandum. Generally, Moody's bases its ratings on information and material so furnished and on investigations, studies and assumptions made by it. The rating is not a recommendation to buy, sell or hold the Bonds. The rating reflects only the views of Moody's and an explanation of the significance of such rating may be obtained from Moody's.

No assurance can be given that the rating will be maintained for any given period of time or that the rating may not be revised downward or withdrawn entirely by Moody's, if in its judgment, circumstances warrant. Any such downward change in or withdrawal of the rating may have an adverse effect on the market price of the Bonds. The Placement Agent and the Issuer have undertaken no responsibility after the offering of the Bonds to assure the maintenance of the rating or to oppose any such revision or withdrawal.

## **OTHER MATTERS**

The foregoing summaries and explanations do not purport to be comprehensive, and are expressly made subject to the exact provisions of documents referred to herein. Copies of the Indenture and the other documents referred to herein may be obtained from the Trustee or the Placement Agent. Any statements in this Private Placement Memorandum involving matters of opinion or forecast, whether or not expressly so stated, are intended as such and not as representations of fact. This Private Placement Memorandum is not to be construed as a contract or agreement between the Issuer or the Placement Agent and the purchasers or holders of any Bonds.

The execution and delivery of this Private Placement Memorandum have been duly authorized by the Issuer.

**City of Fort Wayne, Indiana**

By: \_\_\_\_\_  
Mayor

**APPENDIX A**

**FORM OF OPINION OF BOND COUNSEL**

(July 12, 1993)

Draft # 2  
Doc. #plc-1773  
Date: 7/12/93

CITY OF FORT WAYNE, INDIANA  
\$3,720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993A

and

CITY OF FORT WAYNE, INDIANA  
\$345,000  
HEALTH CARE FACILITIES TAXABLE REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993B

BOND PLACEMENT AGREEMENT

City of Fort Wayne, Indiana  
Fort Wayne, Indiana

Health Quest Realty X,  
an Indiana Limited Partnership  
South Bend, Indiana

August \_\_, 1993

Dear Ladies and Gentlemen:

Bank One, Columbus, N.A. (the "Placement Agent"), on behalf of itself and not as your agent or fiduciary, understands that the City of Fort Wayne, Indiana (the "Issuer"), proposes to issue and sell \$3,720,000 aggregate principal amount of its Health Care Facilities Revenue Refunding Bonds, Health Quest Realty X Issue (FHA Insured Mortgage), Series 1993A (the "Series 1993A Bonds"), and \$345,000 aggregate principal amount of its Health Care Facilities Taxable Revenue Refunding Bonds, Health Quest Realty X Issue (FHA Insured Mortgage), Series 1993B (the "Series 1993B Bonds" and, collectively with the 1993A Bonds, the "Bonds"). The Bonds are to be issued pursuant to Title 36, Article 7, Chapters 11.9 and 12, and Title 5, Article I, Chapter 5 of the Indiana Code, as amended (collectively, the "Act"), and a Trust Indenture dated as of August 1, 1993 (the "Indenture"), between the Issuer and Society National Bank, Indiana, as trustee (the "Trustee"), as set forth in the Private Placement Memorandum of the Issuer prepared for use by the Placement Agent in making an offering of the Bonds (the "Private Placement Memorandum"). The Bonds will mature on the dates and will bear interest at the rates set forth in Schedule I hereto.

The Bonds are being issued by the Issuer (i) to provide a portion of the money to refund the Issuer's Health Care Facilities Revenue Bonds, Health Quest Realty X Issue (FHA Insured Project), Series A (the "1983 Bonds"), issued by the Issuer in part for the purpose of financing

a mortgage loan (the "Mortgage Loan"), made to Health Quest Realty X, an Indiana Limited Partnership (the "Developer"), and (ii) to pay certain costs of issuing the Bonds and other costs of the refunding. The Mortgage Loan is evidenced by a mortgage note (the "Mortgage Note") secured by a first lien mortgage (the "Mortgage") on the Project (as defined in the Indenture). The Mortgage Note has been finally endorsed for insurance by the Federal Housing Administration ("FHA"), an organizational unit within the United States Department of Housing and Urban Development ("HUD"), pursuant to the provisions of Section 232 of the National Housing Act of 1934, as amended (the "National Housing Act").

Section 1. Purchase, Sale and Delivery of Bonds. On the basis of the representations and agreements contained herein, but subject to the terms and conditions herein set forth, the Placement Agent agrees to sell for the Issuer, and the Issuer agrees to sell to the purchasers found by the Placement Agent, all, but not less than all, of the Bonds at a purchase price equal to 100% of the aggregate principal amount thereof, plus accrued interest to the Closing Date specified below. The Issuer shall deliver the Bonds to the order of the Placement Agent in definitive form against payment of the purchase price therefor by immediately available funds at 10 a.m., Eastern time, on August \_\_, 1993, or at such other time thereafter as may be mutually agreed upon by the parties, such time being hereinafter referred to as the "Closing Date." Bonds in definitive form (with CUSIP numbers printed thereon) shall be delivered to the Placement Agent for inspection and packaging at least two business days prior to the Closing Date.

The terms and conditions of the Bonds shall be as set forth in the Indenture and described in the Private Placement Memorandum.

For its services hereunder, the Placement Agent shall receive a fee equal to \$\_\_\_\_\_ which shall payable on the Closing Date and from which it shall pay certain expenses set forth in Schedule II hereto.

Section 2. Financing Documents. On or prior to the Closing Date, the Placement Agent shall have received copies of the following:

- (a) The Indenture, duly executed by the Issuer and the Trustee;
- (b) The Private Placement Memorandum, duly executed by the Issuer, certified by an authorized officer of the Issuer as a "final Private Placement Memorandum" within the meaning of Rule 15c2-2(e)(3) of the Securities Exchange Act of 1934, as amended;
- (c) The Escrow Agreement (the "Escrow Agreement") between the Issuer and the trustee under the Trust Indenture securing the Prior Bonds (the "Prior Trustee"), duly executed by the Issuer and the Prior Trustee;
- (d) The Ordinance of the Issuer authorizing the issuance and delivery of the Bonds (the "Ordinance");
- (e) The Loan Agreement dated as of August 1, 1993, between the Issuer and the Developer (the "Loan Agreement");
- (f) The Mortgage Note and Mortgage duly executed by the Developer and endorsed for insurance by FHA.

(g) The Custody and Tender Option Agreement with respect to the Series 1993A Bonds (the "Tender Option Agreement"), dated as of August 1, 1993, executed by PNC Bank, Ohio, National Association, as Custodian (in such capacity, the "Custodian"), and as tender agent (in such capacity, the "Tender Agent"), Bank One, Akron, NA (the "Depositor"), and Bank One, Columbus, N.A., as remarketing agent (in such capacity, the "Remarketing Agent");

(h) the Collateral Deposit Agreement, dated as of August 1, 1993, executed by the Depositor, the Custodian, and the Developer (the "Collateral Agreement"); and

(i) The Investment Agreement, dated as of August \_\_, 1993 (the "Investment Agreement"), executed by the Trustee and \_\_\_\_\_ (the "Investment Agreement Provider").

**Section 3. Offering and Authorization.** The Placement Agent proposes to offer and sell the Bonds as set forth in the Private Placement Memorandum. The Issuer acknowledges that it has been advised that the Placement Agent may offer the Bonds at prices above or below the prices set forth in the Private Placement Memorandum.

The Issuer acknowledges that the Indenture and the Private Placement Memorandum, including any supplements or amendments thereto, have been and will be used by the Placement Agent in connection with the offer and sale of the Bonds. The Issuer hereby ratifies the use by the Placement Agent of the Preliminary Private Placement Memorandum dated August \_\_, 1993 (the "Preliminary Private Placement Memorandum"), with respect to the Bonds and represents that the Preliminary Private Placement Memorandum is "final" within the meaning of Rule 15c2-12(b) under the Securities Exchange Act of 1934, as amended.

**Section 4. Representations.** The Issuer makes the following representations to the parties hereto.

(a) The Issuer represents that the information in the Private Placement Memorandum under the captions "THE ISSUER" and "ABSENCE OF LITIGATION," as of the date thereof, does not include any untrue statement of a material fact or fail to state any material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(b) At the time of the execution of this Bond Placement Agreement, the Issuer is, and on the Closing Date the Issuer will be a municipal corporation and a political subdivision of the State of Indiana (the "State"), with full legal right, power and authority to borrow money as necessary to issue the Bonds.

(c) The Issuer has complied with all the provisions of the laws of the State and has full legal right, power and authority to issue the Bonds and to enter into this Bond Placement Agreement, to authorize the execution of the Indenture, to authorize the preparation of the Private Placement Memorandum relating to the Bonds and to authorize their distribution by the Placement Agent, to sell and deliver the Bonds to the Placement Agent as provided herein and to carry out and consummate all other transactions contemplated by each of the aforesaid documents.

(d) The Ordinance, duly authorized the execution of the Indenture, approved the execution and delivery of this Bond Placement Agreement, the Private Placement Memorandum and the Bonds, and authorized the taking of any and all such action as may be required on the part of the Issuer to carry out, give effect to and consummate the transactions contemplated thereby.

(e) The execution and delivery of the Private Placement Memorandum, this Bond Placement Agreement, the Indenture and the Bonds and other agreements contemplated hereby and thereby, is in compliance with the provisions hereof and thereof, and the issuance of the Bonds and use of the proceeds thereof as so contemplated will not conflict with or constitute a breach of or a default under any law, administrative regulation, court decree, resolution or agreement to which the Issuer is subject.

**Section 5. Representations and Warranties of the Developer.** The Developer makes the following representations and warranties to the Issuer and the Placement Agent as of the date hereof:

(a) The Developer is a duly organized and existing limited partnership under the laws of the State and has full legal right, power and authority (i) to enter into this Bond Placement Agreement, and (ii) to fulfill its obligations under the Mortgage Note, as amended as of the date hereof.

(b) The information in the Private Placement Memorandum under the captions "THE DEVELOPER" and "THE PROJECT," does not on the date hereof contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements relating to the Developer and the Project contained therein, in light of the circumstances under which they were made, not misleading.

(c) Except as disclosed in the Private Placement Memorandum, to the best knowledge of the Developer after due inquiry, as of the Closing Date, the Developer will not be in breach of or default under any applicable law or administrative regulation of the State, or of the United States that would impair materially the performance of its obligations under this Bond Placement Agreement, the Mortgage Note, the Mortgage, the Loan Agreement, or any applicable judgment or decree to which the Developer is a party or otherwise subject; and the execution and delivery of this Bond Placement Agreement and compliance with the provisions thereof will not to the best knowledge of the Developer after due inquiry, materially conflict with or constitute a material breach of or default from any law, administrative regulation, judgment, decree, loan agreement or note to which the Developer is a party or otherwise subject.

(d) To the best knowledge of the Developer after due inquiry, all approvals, consents and orders of any governmental authority, board or commission having jurisdiction over the Developer or the Project that would constitute a condition precedent to the performance of the Developer of its obligations hereunder and under the Loan Agreement, the Mortgage Note or the Mortgage have been obtained or have been applied for if such consent constitutes a condition subsequent.

(e) The Developer has received no notice of any pending or threatened action, suit, proceeding, inquiry or investigation, at law or in equity, before any court, other board or body affecting the existence of the Developer or seeking to prohibit, restrain or enjoin the financing or the sale, issuance or delivery of the Bonds, the refunding of the Prior Bonds or in any way contesting or affecting the validity or enforceability of this Bond Placement Agreement, the Mortgage Note, or the Mortgage or contesting the execution and delivery of this Bond Placement Agreement wherein an unfavorable decision relating or finding would materially adversely affect the validity or enforceability of any such documents.

(f) (i) The Mortgage Loan is not delinquent under the terms thereof to the extent of more than one monthly payment of principal, interest or escrow default and is not otherwise in default; (ii) the Mortgage Loan is not subject to any defense that would prevent recovery in full or in part, of any benefits under the FHA mortgage insurance contract with respect to the Mortgage Loan or that would result in any deduction or surcharge from such mortgage insurance



benefits or the requirements of any indemnity; and (iii) outstanding advances to the Mortgagor under the Mortgage Loan other than the outstanding principal amount of the Mortgage Loan.

**Section 6. Termination.** The Placement Agent may terminate its obligations hereunder by written notice to the Issuer and the Developer if at or prior to the Closing Date:

(a) (i) Legislation shall have been enacted by the Congress, or recommended to the Congress for passage by the President of the United States or the U.S. Department of the Treasury or the Internal Revenue Service or any member of the United States Congress or favorably reported for passage to either House of the Congress by any Committee of such House to which such legislation has been referred for consideration, or (ii) a decision shall have been rendered by a court established under Article III of the Constitution of the United States, or the United States Tax Court, or (iii) an order, ruling, regulation or communication (including a press release) shall have been issued by the Treasury Department of the United States or the Internal Revenue Service, in each case referred to in clauses (i), (ii) and (iii), with the purpose or effect, directly or indirectly, of including in gross income for federal income tax purposes interest to be received by any owners of the Series 1993A Bonds;

(b) Legislation shall have been enacted, or action taken by the Securities and Exchange Commission, that, in the opinion of counsel to the Placement Agent, has the effect of requiring the contemplated offering of the Bonds to be registered under the Securities Act of 1933, as amended, or the Indenture to be qualified under the Trust Indenture Act of 1939, as amended; or

(c) There shall have occurred after the date hereof a general suspension of trading in securities, or the declaration of a general banking moratorium by the United States of America, State of Ohio or State authorities, or any war involving the United States or other national calamity, the effect of which, in the Placement Agent's reasonable judgment, will adversely affect the marketability of the Bonds.

**Section 7. Conditions to Placement Agent's Obligation.** The Placement Agent's obligation hereunder to place the Bonds for the Issuer shall be subject to the accuracy of the representations of the Issuer herein, to the accuracy of statements to be made on behalf of the Issuer, to the performance by the Issuer of its obligations hereunder, and to the following additional conditions:

(a) All official or corporate action of the Issuer relating to the Indenture, the Escrow Agreement, the Ordinance, the Loan Agreement, this Bond Placement Agreement and the Bonds shall be in full force and effect and shall not have been amended, modified or supplemented, except as may have been agreed to by the Placement Agent.

(b) The Placement Agent shall have received an unqualified approving legal opinion of Kutak Rock, Washington, D.C., Bond Counsel, dated the Closing Date with respect to the Bonds, together with a supplemental opinion in substantially the form attached hereto as Exhibit A.

(c) The Placement Agent shall have received an opinion of counsel for the Issuer, in substantially the form attached as Exhibit B.

(d) The Placement Agent shall have received an opinion of counsel to the Developer, in substantially the form attached as Exhibit C.

(e) The Placement Agent shall have received an opinion of its counsel, Arter Hadden Haynes & Miller, Washington, D.C., dated the Closing Date, as to such matters and in such form as the Placement Agent may reasonably request. In rendering such

opinion, such counsel may assume the correctness of the matters contained in the opinions of Bond Counsel and Issuer's counsel and may rely on the other certificates and opinions delivered hereunder with respect to the matters covered therein.

(f) The Placement Agent shall have received a certificate, dated the Closing Date and signed by an authorized officer of the Trustee, to the effect that (i) he or she is an authorized officer of the Trustee; (ii) the Indenture has been duly executed and delivered by the Trustee; (iii) the Trustee has all necessary corporate and trust powers required to carry out the trust created by the Indenture; and (iv) to the best of his or her knowledge, the acceptance by the Trustee of the duties and obligations of the Trustee under the Indenture and compliance with the provisions thereof will not conflict with or constitute a breach of or default under any law, administrative regulation, consent decree or any agreement or other instrument to which the Trustee is subject.

(g) The Placement Agent shall have received a certificate, signed by an authorized officer of the Trustee, solely in its capacity as Mortgagee under the Mortgage Note, to the effect that (i) the Mortgage Loan is not delinquent under the terms thereof to the extent of more than one monthly payment of principal, interest or escrow default and is not otherwise in default; (ii) the Mortgage Loan is not subject to any defense that would prevent recovery in full or in part, of any benefits under the FHA mortgage insurance contract with respect to the Mortgage Loan or that would result in any deduction or surcharge from such mortgage insurance benefits or the requirements of any indemnity; and (iii) the Mortgage Loan is not subject to any outstanding advances to the Mortgagor under the Mortgage Loan other than the outstanding principal amount of the Mortgage Loan.

(h) The Placement Agent shall have received an opinion of counsel to the Trustee in substantially the form attached as Exhibit D hereto.

(i) The Placement Agent shall have received a certificate, dated the Closing Date and signed on behalf of the Issuer, to the effect that:

(i) except as disclosed in the Private Placement Memorandum under the caption "ABSENCE OF LITIGATION," no litigation or other proceedings involving the Issuer are pending or, to the knowledge of the person or persons signing the certificate, threatened in any court or other tribunal of competent jurisdiction, state, State or federal, in any way (A) restraining or enjoining the issuance, sale or delivery of the Bonds, (B) questioning or affecting the refunding of the Prior Bonds, the Bonds, the validity of this Bond Placement Agreement, the Indenture, the Loan Agreement, the Escrow Agreement, the pledge to the Bondholders of any money or other security provided under the Indenture, or any other transaction referred to in the Private Placement Memorandum, (C) questioning or affecting the validity of any of the proceedings for the refunding of the Prior Bonds, or the authorization, sale, execution, issuance or delivery of the Bonds, (D) questioning or affecting the organization or existence of the Issuer or the title to any office of the executive officers thereof or (E) questioning or affecting the power and authority of the Issuer to issue the Bonds, or to execute this Bond Placement Agreement, the Indenture, the Escrow Agreement, the Loan Agreement or the Private Placement Memorandum;

(ii) the information in the Private Placement Memorandum under the captions "THE ISSUER" and "ABSENCE OF LITIGATION," does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and

(iii) the Issuer has complied with and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date and the representations of the Issuer contained herein are true, complete and correct as of the Closing Date.

(j) The Placement Agent shall have received arbitrage certifications by the Issuer in form and substance satisfactory to Bond Counsel.

(k) Moody's Investor Services, Inc. shall have issued and not withdrawn a rating of "\_\_\_" on the Bonds.

(l) The Placement Agent shall have received an opinion of counsel to the Custodian and the Tender Agent, in substantially the form attached as Exhibit E hereto.

(m) The Placement Agent shall have received an opinion of counsel to the Depositor in substantially the form attached as Exhibit F hereto.

(n) The Placement Agent shall have received a certificate of an authorized officer of the Depositor in substantially the form attached as Exhibit G hereto.

(o) The Placement Agent shall have received a certificate of the Trustee with respect to Bond proceeds in substantially the form attached as Exhibit H hereto.

(p) The conditions precedent (other than the issuance of the Bonds) to the issuance of the Certificates (as defined in the Tender Option Agreement) set forth in the Tender Option Agreement shall have been met.

**Section 8. Covenants.** The Issuer covenants and agrees with the Placement Agent as follows:

(a) If any event occurs prior to the date that is 90 days after the Closing Date as a result of which the Private Placement Memorandum would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein not misleading, the Issuer shall prepare or cause to be prepared with the Placement Agent's approval an amendment or supplement to the Private Placement Memorandum that will correct such statement or omission, provided, however, if such event occurs on or prior to the Closing Date, the Placement Agent in its sole discretion shall have the right to terminate its obligations hereunder by written notice to the Issuer and the Developer. The Issuer's obligations under this paragraph are limited to the information under the captions "THE ISSUER" and "ABSENCE OF LITIGATION," except to the extent that the Issuer receives written notice that the Private Placement Memorandum includes an untrue statement of material fact or omits to state a material fact, which notice specifies the statement or omission.

(b) To the extent required by the Indenture, the Issuer shall take all necessary actions to cause the Bonds to comply with the provisions of the laws and regulations of the State pursuant to which the Bonds are issued and, upon written notice from Bond Counsel, of the 1954 Code (as defined in the Indenture), or the Code (as defined in the Indenture) and shall not knowingly take any action, or permit any action within its control to be taken, in violation of such provisions or that would cause interest on the Series 1993A Bonds to be included in gross income for federal income tax purposes.

(c) The Issuer covenants to deliver to the Placement Agent a final Private Placement Memorandum (within the meaning of Rule 15c2-12(e) of the Securities Exchange Act of 1934, as amended), duly executed by the Mayor of the Issuer on the date hereof. The Issuer also covenants to provide the Placement Agent with a reasonable number of additional copies of such

final Private Placement Memorandum as the Placement Agent may request, at the expense of the Developer.

**Section 9. Payment of Expenses.** The Placement Agent shall pay its own expenses; the fees and expenses of its counsel; the initial rating agency fees; the cost of printing the Bonds and certificates, the Preliminary Placement Memorandum, the Placement Memorandum; the fees and expenses of bond counsel; Certificate Disclosure Counsel, Initial Certificate Custody, Tender and Paying Agent fees, and the Liquidity Provider closing fee, initial six-month facility fee, expenses, and counsel; and certain additional expenditures, estimates of which are all more particularly set forth in Schedule II hereof. The Issuer shall pay or cause to be paid, but solely from amounts available therefor under the Indenture, a payment to the Placement Agent of \$\_\_\_\_\_, the fees and expenses of counsel to the Issuer; the Issuer's Fee; the initial Trustee fees and expenses; and the fees and expenses of counsel to the Trustee, estimates of which are set forth in Schedule II hereof. In addition, the Developer shall pay or cause to be paid any and all other costs and expenses in connection with the issuance of the Bonds and the Certificates, including, but not limited to, the expenses of counsel to the Developer, and any document recording costs.

**Section 10. Indemnification.** The Developer agrees to indemnify and hold harmless the Issuer, Bond Counsel, the Placement Agent, its counsel, the Issuer's financial advisors, any member, officer, official, employee or agent of the Issuer and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the Securities Act of 1933, as amended (collectively referred to herein as the "Indemnified Parties"), against any and all losses, claims, damages, liabilities or expenses whatsoever (i) as a result of any legal action brought by or on behalf of the owners of the 1983 Bonds (as defined in the Indenture), provided, however, that the indemnification provided under this subpart (i) to the Issuer, the Issuer's financial advisors, the Issuer's Co-counsel and any member, officer, official, employee or agent of the Issuer or any person who controls the Issuer shall not apply to any loss, claim, damage, liability or expense arising from any willful misconduct by such party; or (ii) caused by any untrue or misleading statement or alleged untrue or alleged misleading statement of a material fact concerning the Developer or the Project contained in the subsections of the Private Placement Memorandum entitled "The Private Participants" or "The Project" or caused by any omission from such subsections of any material fact with respect to the information concerning the Developer or the Project contained in such subsections necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading or, insofar as the Issuer or any member, officer, official, employee or agent of the Issuer is concerned, caused by any untrue or misleading statement or alleged untrue or misleading statement or any omission of any material fact in any portion of the Private Placement Memorandum (other than under the captions "THE ISSUER" or "ABSENCE OF LITIGATION") necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

In case any action shall be brought against one or more of the Indemnified Parties based upon the information described in the preceding paragraph and in respect of which indemnity may be sought against the Developer, the Indemnified Parties shall promptly notify the Developer in writing and the Developer shall promptly assume the defense thereof, including the employment of counsel acceptable to the Indemnified Parties, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties has the right to employ separate counsel in any such action and to participate in the defense thereof. The Developer shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Developer, or if there be a final judgment for the plaintiff in any such action with or without consent, the Developer agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

**Section 11. Survival of Covenants and Representations.** The respective agreements, covenants, representations and other statements of the Issuer, the Placement Agent, the Developer and of their respective officers set forth in or made pursuant to this Bond Placement Agreement shall remain in full force and effect, notwithstanding any investigation made by or on behalf of any party hereto, and shall survive the delivery of and payment for the Bonds.

**Section 12. Notices.** Any notice or other communication to be given to the Issuer under this Bond Placement Agreement may be given by delivering the same in writing to the Issuer at its address set forth above, Attention: \_\_\_\_\_ . Any notice or other communication to be given to the Placement Agent under this Bond Placement Agreement may be given by delivering the same in writing to Bank One, Columbus, N.A., 100 E. Broad Street, Columbus, Ohio 43271-0152, Attention: Linda L. Vining, with a copy to Banc One Capital Corporation, 1750 Presidents Street, Suite 200, Reston, Virginia 22090, Attn: Bruce R. Coleman, Vice President. Any notice or other communication to be given to the Developer under this Bond Placement Agreement may be given by delivering the same in writing to Health Quest Realty X, c/o Health Quest Corporation, 315 West Jefferson, South Bend, Indiana 46601, Attention: Tony Wright.

**Section 13. Governing Law.** This Bond Placement Agreement shall be governed by the laws of the State.

**Section 14. Effectiveness.** This Bond Placement Agreement shall become effective upon the execution of the acceptance hereof by the Issuer.

**Section 15. Counterparts.** This Bond Placement Agreement may be executed in one or more counterparts.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed copy of this Bond Placement Agreement, whereupon it will become a binding agreement among the Placement Agent, the Developer and the Issuer in accordance with its terms.

Very truly yours,

BANK ONE, COLUMBUS, N.A.

By: \_\_\_\_\_  
Vice President

The foregoing is confirmed and accepted as of the date first above written.

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Title:

HEALTH QUEST REALTY X,  
an Indiana Limited Partnership

By: \_\_\_\_\_  
General Partner

SCHEDULE I

MATURITIES, PRINCIPAL AMOUNTS AND INTEREST RATES

<u>Series</u>	<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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**SCHEDULE II**

**ESTIMATED COSTS OF ISSUANCE**

Payment to Placement Agent	\$
Issuer's Fee	
Issuer's Counsel Fees and Expenses	
Initial Bond Trustee Fees and Set-up and Expenses including Trustee Counsel	
<b>TOTAL</b>	<b>\$</b>

**ESTIMATED EXPENSES TO BE PAID BY PLACEMENT AGENT**

Bond Counsel Fees and Expenses	\$
Placement Agent's Counsel Fees and Expenses	
Rating Agency Fees	
Preliminary Placement Memorandum and Placement Memorandum, Printing Costs	
<b>TOTAL</b>	<b>\$</b>
<b>GRAND TOTAL</b>	<b>\$</b>



(Form of Bond Counsel Supplemental Opinion)

[Closing Date]

Bank One, Columbus, N.A.  
Columbus, Ohio

CITY OF FORT WAYNE, INDIANA  
\$3,720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993A

and

CITY OF FORT WAYNE, INDIANA  
\$345,000  
HEALTH CARE FACILITIES TAXABLE REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993B

Dear Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the authorization and issuance of the captioned bonds (the "Bonds") by City of Fort Wayne, Indiana (the "Issuer").

We have examined originals, or copies certified or otherwise identified to our satisfaction, of (a) the Trust Indenture (the "Indenture") relative to the Bonds dated as of August 1, 1993, between the Issuer and Society National Bank, Indiana, as Trustee (the "Trustee"); (b) the Mortgage Note and the Assignment from the Developer; (c) the Bond Placement Agreement dated August \_\_, 1993 (the "Bond Placement Agreement"), between the above-named purchaser and the Issuer; (d) the Private Placement Memorandum (the "Private Placement Memorandum") of the Issuer relating to the Bonds; and (e) the opinions and certificates required to be delivered to the above-named purchaser pursuant to Section 7 of the Bond Placement Agreement. Capitalized terms used herein and not otherwise defined shall have the same meanings as set forth in the Indenture.

On the basis of the foregoing, and our review of such other information, records and documents as in our judgment is necessary or advisable, we are of opinion as follows:

1. The call of the Prior Bonds for redemption as provided in the Prior Indenture from the proceeds of the Bonds is permitted under the terms of the Prior Indenture, and upon the delivery to the Prior Trustee of the investments described in the Escrow Agreement, the lien of the Prior Indenture will be defeased.

2. Under existing laws, the Bonds may be offered and sold without registration under the Securities Act of 1933, as amended, and the Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.

3. The statements made in the Private Placement Memorandum under the headings "INTRODUCTION," "THE BONDS," "THE INDENTURE," "THE LOAN AGREEMENT," "TAX MATTERS," and "LEGAL MATTERS" are, to the extent that such statements are

summaries of documents referred to therein, accurate summaries of the information purported to be shown.

Except as indicated in the preceding paragraph, we have not undertaken to check the accuracy or completeness of, or verified the information contained in, the Private Placement Memorandum. Nevertheless, we have had discussions with representatives of the Issuer and such other persons as we deemed appropriate and our participation in such discussions did not disclose to us any information which gives us reason to believe that the Private Placement Memorandum (except as to any financial or statistical data included in the Private Placement Memorandum as to which we do not express any opinion), as of the date hereof, contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein made, in light of the circumstances under which they were made, not misleading.

In rendering this opinion, we have relied upon the opinions and certificates delivered pursuant to the Bond Placement Agreement.

Reference is made to our opinion of even date herewith delivered in connection with the Bonds and addressed to the Issuer. You may rely on such opinion as if it was addressed to you.

Very truly yours,

(Form of Opinion of Counsel to the Issuer)

[Closing Date]

City of Fort Wayne, Indiana  
Fort Wayne, Indiana

Bank One, Columbus, N.A.  
Columbus, Ohio

Society National Bank, Indiana,  
as trustee  
South Bend, Indiana

CITY OF FORT WAYNE, INDIANA  
\$3,720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993A

and

CITY OF FORT WAYNE, INDIANA  
\$345,000  
HEALTH CARE FACILITIES TAXABLE REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993B

Dear Ladies and Gentlemen:

We have served as special counsel to the City of Fort Wayne, Indiana (the "Issuer"), in the issuance of the above-captioned bonds (collectively, the "Bonds"), issued under and secured by a Trust Indenture dated as of August 1, 1993 (the "Indenture"), between the Issuer and Society National Bank, Indiana, as trustee (the "Trustee"). The Bonds are being sold by Bank One, Columbus, N.A. (the "Placement Agent"), pursuant to a Bond Placement Agreement dated August \_\_, 1993, between the Issuer and the Placement Agent (the "Bond Placement Agreement"). The Indenture, the Escrow Agreement (as defined below), the Bond Placement Agreement and the other documents executed by the Issuer in connection with the Bonds are hereafter referred to as the "Issuer's Documents."

The Series 1993A Bonds are being issued to refund, pursuant to an Escrow Agreement (the "Escrow Agreement") from the Issuer to the Trustee and the Prior Trustee named therein, certain outstanding bonds (the "Prior Bonds") previously issued in part to provide financing to fund an FHA insured project (the "Project") through a mortgage loan (the "Mortgage Loan"), endorsed for mortgage insurance by HUD, acting through the Federal Housing Administration (the "FHA") pursuant to Section 232 of the National Housing Act of 1934, as amended, and secured by a Mortgage on the Project from the Developer to the Trustee acting for the account of the Issuer (the "Mortgage"). The Series 1993B Bonds are being issued to fund a debt service reserve fund for the Bonds. Payment of the principal of and interest on the Bonds will be secured by the payments to be made on the Mortgage Loan and by certain other assets constituting the trust estate under the Indenture.

In this connection, we have examined the Issuer's Documents, the Private Placement Memorandum of the Issuer dated August \_\_, 1993, with respect to the Bonds (the "Private Placement Memorandum"), and such certificates of public officials, corporate documents and other records and other certificates, opinions and instruments and have made such other investigations as we have deemed necessary in connection with the opinions hereinafter set forth.

Based upon the foregoing and upon such investigation as we have deemed necessary, we are of the opinion that:

1. The Issuer is a municipal corporation and a political subdivision of the State of Indiana (the "State"), and as such, has full power and authority to undertake the financing of the Project, to execute and deliver each of the Issuer's Documents, to perform its obligations thereunder, to carry out all the transactions contemplated thereby and to issue and sell the Bonds.

2. The Issuer's Documents have been duly and validly authorized, executed and delivered by the Issuer and, assuming due execution and delivery by the other parties thereto, are legal, valid and binding obligations of the Issuer, enforceable in accordance with their respective terms. The Issuer has complied with all provisions of applicable law in all matters relating to the transactions contemplated by the Issuer's Documents.

3. The Bonds have been duly and validly authorized, executed, issued and delivered by the Issuer and constitute legal, valid and binding limited obligations of the Issuer enforceable in accordance with their terms.

4. The ordinance authorizing the issuance of the Bonds has been duly adopted by the Issuer, complies in all respects with the procedural rules of the Issuer and the requirements of State law and remains in full force and effect on the date hereof.

5. The execution and delivery of, the consummation of the transactions contemplated by and the fulfillment and compliance with the terms of, the Issuer's Documents and the Bonds do not and will not violate or conflict with any provision of any applicable statute, or any rule, order, regulation, judgment or decree of any court, agency or other governmental or administrative board or body to which the Issuer is subject, or conflict with or constitute a breach of or a default under the Issuer's charter or any indenture, mortgage, deed of trust, agreement or other instrument to which the Issuer is a party or by which it or any of its properties are bound.

6. No additional or further approval, consent or authorization of any governmental or public agency or authority not already obtained is required by the Issuer in connection with the issuance or delivery of the Bonds to the Placement Agent or entering into and performing its obligations under the Bonds or the Issuer's Documents.

7. The information under the heading "THE ISSUER" in the Private Placement Memorandum prepared in connection with the sale of the Bonds is true and correct, and does not include any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

8. There is no action, suit, proceeding or investigation by or before any court, agency, or other governmental or administrative board or body, pending against the Issuer or to such counsel's knowledge, threatened, challenging or contesting the existence or powers of the Issuer, the authorization of any officers of the Issuer to act in their respective capacities, or the issuance of the Bonds, or in which an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of the Issuer's Documents; the performance by the Issuer of any of its obligations thereunder; or the issuance of the Bonds.

Very truly yours,

[FORM OF OPINION OF COUNSEL TO DEVELOPER]

[Closing Date]

City of Fort Wayne, Indiana  
Fort Wayne, Indiana

Society National Bank, Indiana,  
as trustee  
South Bend, Indiana

Bank One, Columbus, N.A.  
Columbus, Ohio

CITY OF FORT WAYNE, INDIANA  
\$3,720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993A

and

CITY OF FORT WAYNE, INDIANA  
\$345,000  
HEALTH CARE FACILITIES TAXABLE REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993B

Dear Ladies and Gentlemen:

We have acted as special counsel to Health Quest Realty X, an Indiana general partnership organized under the laws of the State of Indiana (the "Developer"), in connection with the issuance of the above-referenced bonds (the "Bonds") and the Developer's execution of the Collateral Deposit Agreement, dated as of August 1, 1993 (the "Collateral Agreement"), among the Developer, PNC Bank, Ohio, National Association, and Bank One, Akron, NA.

In our capacity as such counsel, in rendering the opinions set forth below, we have examined among other things, originals or copies, certified or otherwise identified to our satisfaction, of the following documents: (i) the Developer's Partnership Agreement; (ii) the Developer's Certificate of Limited Partnership; (iii) the Collateral Agreement; (iv) the Private Placement Memorandum, dated August \_\_, 1993 (the "Private Placement Memorandum") of the Town of Dyer, Indiana (the "Issuer"), with respect to the Bonds; (v) the Bond Placement Agreement, dated August \_\_, 1993, among the Issuer, the Developer and Bank One, Columbus, N.A., as Placement Agent (the "Bond Placement Agreement"); (vi) the FHA form of Regulatory Agreement between the Developer and the United States Department of Housing and Urban Development (the "FHA Regulatory Agreement") and (vii) such other documents, certificates and instruments as we have deemed necessary for the purposes of reaching the opinion expressed herein. We have also relied as to matters of fact upon certificates of officers of the Developer and examined certain other certificates and documents.

In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to the original document of all documents submitted to us as photostatic or certified copies. We have assumed due authorization, execution and delivery of all documents referenced herein by the parties thereto other than the Developer and that each of such parties has full power, authority and legal right to execute and deliver each such instrument.

Based upon and subject to the foregoing, we are of the opinion that, as of the date hereof:

(i) The Developer is a limited partnership validly existing and in good standing under the laws of the State of Indiana, with full partnership power and authority to execute and deliver the Mortgage Loan Documents and the Collateral Agreement and to perform its obligations under each respective agreement.

(ii) The Mortgage, the Mortgage Note and the Loan Agreement (each, as defined in the Collateral Agreement, and, collectively, the "Mortgage Loan Documents"), the Bond Placement Agreement and the Collateral Agreement have each been duly authorized, executed and delivered by the Developer and constitute legal, valid and binding obligations of the Developer, enforceable in accordance with their respective terms, except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization and similar laws (including fraudulent conveyance laws) affecting the enforcement of creditors' rights and remedies generally in effect from time to time, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding at equity or at law).

(iii) The execution and delivery of the Mortgage Loan Documents, the Collateral Agreement, the Bond Placement Agreement and the performance by the Developer of the terms of the respective agreements do not conflict with or violate the Partnership Agreement, the FHA Regulatory Agreement or any other document, instrument, decree, indenture or agreement by which the Developer is bound.

(iv) No approval, authorization or other action by, or filing with, the State of Indiana, or any agency thereof, is required in connection with the execution and delivery by the Developer of the Bond Placement Agreement and, the Collateral Agreement.

(v) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before any court, public body pending or, to the best of our knowledge, after due inquiry, threatened, to challenge the right, power or authority of the Developer to own and operate the Project (as defined in the Private Placement Memorandum) perform its obligations under the Bond Placement Agreement, the Mortgage Loan Documents, or the Collateral Agreement.

(vi) The information set forth in the Private Placement Memorandum under the captions "THE DEVELOPER" and "THE PROJECT" is true and correct and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(vii) We have no reason to believe that the Private Placement Memorandum (except as to any financial or statistical data included therein, as to which we do not express any opinion), as of the date hereof, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

Very truly yours,

(Form of Opinion of Counsel to the Trustee)

[Closing Date]

City of Fort Wayne, Indiana  
Fort Wayne, Indiana

Society National Bank, Indiana,  
as trustee  
South Bend, Indiana

Bank One, Columbus, N.A.  
Columbus, Ohio

CITY OF FORT WAYNE, INDIANA  
\$3,720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993A

and

CITY OF FORT WAYNE, INDIANA  
\$345,000  
HEALTH CARE FACILITIES TAXABLE REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993B

Dear Ladies and Gentlemen:

We have acted as counsel for Society National Bank, Indiana (the "Bank"), in connection with the Bank's serving as trustee under a Trust Indenture dated as of August 1, 1993, between the City of Fort Wayne, Indiana (the "Issuer"), and the Bank (the "Indenture") relating to the issuance by the Issuer of the above-captioned Bonds (the "Bonds"). All capitalized terms used in this opinion and not otherwise defined shall have the meaning set forth in the Indenture.

In that connection we have examined originals or copies certified or otherwise identified to our satisfaction of the Indenture, and such other documents, and have made such factual inquiries, as we have deemed necessary or desirable for the purpose of rendering the opinion set forth below.

Based on the foregoing we are of the opinion that:

(i) The Bank is a national banking association, duly organized and validly existing under the laws of the United States;

(ii) The Bank has taken all corporate action necessary to assume the duties and obligations of the Trustee under the Indenture;

(iii) The Bank has duly authorized the execution and delivery of the Indenture, and, assuming that the Indenture is legally valid and binding upon the Issuer, the Indenture will be the valid, legal and binding obligation of the Bank in its capacity as Trustee, enforceable against the Bank in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights;

(iv) All approvals, consents and orders of any United States banking authority or agency having jurisdiction over the Bank that would constitute a condition precedent to the performance by the Bank of its duties and obligations under the Indenture as Trustee have been obtained and are in full force and effect;

(v) The acceptance by the Bank of the duties and obligations of the Trustee under the Indenture and compliance with the provisions thereof will not conflict with or constitute a breach of or default under any United States or Indiana law or administrative regulation pertaining to the banking and trust powers of the Bank, any consent decree to which the Bank has agreed or any agreement or other instrument to which the Bank is subject; and

(vi) To the best of our knowledge, no litigation is pending or threatened in any way contesting or affecting the existence of powers (including trust powers) of the Bank or affecting the Bank's ability to fulfill its duties and obligations under the Indenture.

Very truly yours,



(FORM OF OPINION OF COUNSEL TO THE  
CUSTODIAN AND THE TENDER AGENT)

[Closing Date]

City of Fort Wayne, Indiana  
Fort Wayne, Indiana

Bank One, Akron, NA  
Akron, Ohio

Bank One, Columbus, N.A.  
Columbus, Ohio

CERTIFICATES  
Relating to  
CITY OF FORT WAYNE, INDIANA  
\$3,720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993A

Dear Ladies and Gentlemen:

We have acted as counsel for PNC Bank, Ohio, National Association (the "Bank"), in connection with the Bank's serving as Custodian and Tender Agent under a Custody and Tender Option Agreement dated as of August 1, 1993, among Bank One, Akron, NA, as Depositor (the "Depositor"), Bank One, Columbus, N.A., as Remarketing Agent, and the Bank, as Custodian and Tender Agent (the "Agreement") relating to the issuance by the Issuer of the above-captioned Certificates (the "Certificates"). The Bank is also serving as Custodian under the Collateral Deposit Agreement, dated as of August 1, 1993, among the Bank, the Depositor and Health Quest Realty X, an Indiana general partnership (the "Collateral Deposit Agreement"). All capitalized terms used in this opinion and not otherwise defined shall have the meaning set forth in the Agreement.

In that connection we have examined originals or copies certified or otherwise identified to our satisfaction of the Agreement, the Collateral Deposit Agreement and such other documents, and have made such factual inquiries, as we have deemed necessary or desirable for the purpose of rendering the opinion set forth below.

Based on the foregoing we are of the opinion that:

(i) The Bank is a national banking association, duly organized and validly existing under the laws of the United States;

(ii) The Bank has taken all corporate action necessary to assume the duties and obligations of the Bank under the Agreement;

(iii) The Bank has duly authorized the execution and delivery of the Agreement, and the Collateral Deposit Agreement and, assuming that the Agreement and the Collateral Deposit Agreement are legally valid and binding upon the other parties thereto, the Agreement and the Collateral Deposit Agreement will be the valid, legal and binding obligations of the Bank, enforceable against the Bank in accordance with its terms, except as enforcement thereof may

be limited by bankruptcy, insolvency, moratorium or other laws or equitable principles affecting the enforcement of creditors' rights;

(iv) All approvals, consents and orders of any United States banking authority or agency having jurisdiction over the Bank that would constitute a condition precedent to the performance by the Bank of its duties and obligations under the Agreement and the Collateral Deposit Agreement have been obtained and are in full force and effect;

(v) The acceptance by the Bank of the duties and obligations under the Agreement and the Collateral Deposit Agreement and compliance with the provisions thereof will not conflict with or constitute a breach of or default under any United States or Ohio law or administrative regulation pertaining to the banking and trust powers of the Bank, any consent decree to which the Bank has agreed or any agreement or other instrument to which the Bank is subject; and

(vi) To the best of our knowledge, no litigation is pending or threatened in any way contesting or affecting the existence or powers (including trust powers) of the Bank or affecting the Bank's ability to fulfill its duties and obligations under the Agreement and the Collateral Deposit Agreement.

Very truly yours,

(FORM OF OPINION OF COUNSEL TO THE DEPOSITOR)

[Closing Date]

City of Fort Wayne, Indiana  
Fort Wayne, Indiana

Bank One, Akron, NA  
Akron, Ohio

Bank One, Columbus, N.A.  
Columbus, Ohio

CERTIFICATES  
Relating to  
CITY OF FORT WAYNE, INDIANA  
\$3,720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993A

Dear Ladies and Gentlemen:

We have acted as special counsel for Bank One, Akron, NA (the "Bank"), in connection with the Bank's serving as Depositor and Liquidity Facility Provider under a Custody and Tender Option Agreement (the "Custody and Tender Option Agreement"), dated as of August 1, 1993, among the Bank, Bank One, Columbus, N.A., as Remarketing Agent, and PNC Bank, Ohio, National Association, as Custodian and Tender Agent, relating to the issuance of the above-captioned Certificates (the "Certificates"). All capitalized terms used in this opinion and not otherwise defined shall have the meaning set forth in the Custody and Tender Option Agreement.

In connection with this opinion, we have (i) made such investigations of law as we have deemed necessary or appropriate for purposes of this opinion, (ii) examined originals or copies certified or otherwise identified to our satisfaction of the Custody and Tender Option Agreement, the Collateral Deposit Agreement (the "Collateral Deposit Agreement"), dated as of August 1, 1993, between the Bank and Health Quest Realty X, an Indiana general partnership (the "Developer") and the Remarketing Agreement (the "Remarketing Agreement"), dated as of August 1, 1993, among the Bank, the Developer and the Remarketing Agent, (iii) examined the organizational documents of the Bank and such other certificates of public officials, officers of the Bank and other persons and such other agreements, instruments and other documents as we have deemed necessary or appropriate for purposes of this opinion, and (iv) except with respect to the execution by the Bank of the Custody and Tender Option Agreement, the Collateral Deposit Agreement and the Remarketing Agreement, assumed the authenticity of signatures on original documents submitted to us as certified, conformed or photostatic copies.

Based upon and subject to the foregoing, we are of the opinion that:

1. The Bank is a national banking association duly organized and validly existing under the laws of the United States of America.
2. The execution, delivery and performance by the Bank of the Custody and Tender Option Agreement, the Collateral Deposit Agreement and the Remarketing Agreement has not

resulted and will not result in a violation of its Articles of Association or Bylaws or any laws, rules or regulations to which the Bank is subject which could have any material adverse effect upon the validity or enforceability of any of the terms of the Custody and Tender Option Agreement, the Collateral Deposit Agreement or the Remarketing Agreement.

3. Each of the Custody and Tender Option Agreement, the Collateral Deposit Agreement and the Remarketing Agreement has been duly authorized, executed and delivered by the Bank and, assuming that such document is duly executed and delivered by the other party or parties thereto, constitutes a legal, valid and binding obligation of the Bank enforceable against the Bank in accordance with its terms, except as the binding effect and enforceability thereof are subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws in effect from time to time affecting the rights of creditors generally, including any such laws particularly affecting national banking associations, and except to the extent that the enforceability thereof may be limited by the application of general principles of equity and except that rights to indemnity may be limited by applicable law.

In rendering the foregoing opinions, we express no opinion as to the registration, filing or qualification requirements, if any, required under state securities laws, the Securities Act of 1933, as amended, the Trust Indenture Act of 1939, as amended, or the Investment Company Act of 1940, as amended, with respect to the Certificates or the Bonds or any other security or any documents or agreements related thereto. Furthermore, we express no opinion with respect to the laws of any jurisdiction other than the State of Ohio and the United States of America. In addition, notwithstanding anything herein to the contrary, we express no opinion as to whether funds drawn for payments relating to the Certificates would or would not constitute an avoidable preference with respect to the bankruptcy of the Town/City or the Developer.

With respect to our opinion set forth in paragraph 1 above, we have relied solely on Item 1. of the Certificate attached hereto as Exhibit A. This opinion is furnished by us as counsel to the Bank and is solely for your benefit. Neither this opinion nor copies thereof may be relied upon, be delivered to, or quoted in whole or in part to any governmental agency or other person without our prior written consent.

Respectfully submitted,

[CERTIFICATE OF DEPOSITOR]

CERTIFICATES  
Relating to  
CITY OF FORT WAYNE, INDIANA  
\$3,720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993A

Bank One, Akron, NA (the "Bank"), by a duly authorized Officer, hereby certifies that the representations of the Bank set forth in Section 7.01 of the Custody and Tender Option Agreement, dated as of August 1, 1993, among the Bank, as Depositor and Liquidity Facility Provider, PNC Bank, Ohio, National Association, as Custodian and as Tender Agent, and Bank One, Columbus, N.A., as Remarketing Agent (the "Remarketing Agent"), in Section 2.02 of the Collateral Deposit Agreement, dated as of August 1, 1993, between the Bank and Health Quest Realty X, an Indiana general partnership, as Owner (the "Owner"), and in Section 12 of the Remarketing Agreement, dated as of August 1, 1993, among the Bank, the Owner and the Remarketing Agent, are true and correct as the date hereof.

BANK ONE, AKRON, NA

Dated: August \_\_, 1993

By: \_\_\_\_\_  
Vice President

EXHIBIT H

TRUSTEE'S CERTIFICATE WITH RESPECT TO BOND  
PROCEEDS AND OTHER AMOUNTS DELIVERED AT CLOSING

CITY OF FORT WAYNE, INDIANA  
\$3,720,000  
HEALTH CARE FACILITIES REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993A

and

CITY OF FORT WAYNE, INDIANA  
\$345,000  
HEALTH CARE FACILITIES TAXABLE REVENUE REFUNDING BONDS  
HEALTH QUEST REALTY X ISSUE  
(FHA INSURED MORTGAGE)  
SERIES 1993B

The undersigned officer of Society National Bank, Indiana, as Trustee (the "Trustee") under the Trust Indenture dated as of August 1, 1993 (the "Indenture"), relating to the above-captioned bonds (the "Bonds"), hereby certifies that:

1. The Trustee has received \$ \_\_\_\_\_ as follows:

Principal Amount of Bonds  
Developer's Contribution \_\_\_\_\_

Total

2. Such amounts have been applied as follows:

Deposit to Acquisition Fund  
Deposit to Cost of Issuance Fund  
Deposit to Bond Fund \_\_\_\_\_

Total

3. The Trustee has also received the sum of \$ \_\_\_\_\_ from the Prior Trustee (as defined in the Indenture). Such amounts have been applied as follows:

Deposit to Debt Service Reserve Fund  
Deposit to Bond Fund \_\_\_\_\_

Total

In witness whereof, I have hereunto set my hand this \_\_\_\_ day of August, 1993.

Society National Bank, Indiana,  
as Trustee

By: \_\_\_\_\_  
Title: \_\_\_\_\_